

THE
DECLARATION
OF JOHN PYM *Esquire*,
F P O N
THE VVHOLE MATTER
of the Charge of *High Treason*, against
THOMAS
EARLE OF STRAFFORD,
APRIL 12. 1641.

W I T H
An ARGUMENT of Law concerning
the Bill of *Attainder of High Treason* of the said
EARLE of STRAFFORD,
Before a Committee of both Houses of Parliament,
in WESTMINSTER Hall,
BY M^r S^r John his Majesties Solicitor Generall,
on Thursday, April 29. 1641.

Both Published by Order of the Commons House.

Printed at London for *John Bartlet*, and are to be sold at the
gilt Cup near *S. Austins Gate*, in *Pauls Church-yard*. 1641.

THE
DECLARATION

LIBRARY OF THE HOUSE OF COMMONS

1810

1810

THE V. HOLB MATTER

of the Charge of High Treason against

THOMAS

BARON OF STRATFORD

April 1841

W. H.

DECLARATION of Law concerning

the Bill of Attainder of High Treason of the said

HAROLD OF STRATFORD

by a Committee of both Houses of Parliament

in the House of Commons

By Mr. John Lubbock, Solicitor General

and Mr. John Lubbock, Solicitor General

both printed by Order of the Commons House

1841

THE
SPEECH
OR
DECLARATION

OF
JOHN PYM, Esquire:

After the Recapitulation or summing
up of the Charge of *High-Treason*,

AGAINST

THOMAS,
EARLE OF STRAFFORD,
12. APRIL, 1641.

Published by Order of the
COMMONS HOUSE.



L O N D O N,
Printed for JOHN BARTLET. 1641.

HARVARD COLLEGE LIBRARY

FROM THE LIBRARY

OF F. L. GAY

JUNE 1, 1916



THE
S P E E C H
OR
DECLARATION
OF
JOHN PYM, Esq: &c.

MY LORDS,

MAny dayes have been spent in maintenance of the Impeachment of the *Earle of Strafford*, by the *House of Commons*, whereby he stands charged with *High Treason*: And your *Lordships* have heard his *Defence* with *Patience*, and with as much favour as *Iustice* would allow: We have passed through our

Evidence, and the Result of all this is, that it remaines clearly proved, That the Earle of Strafford hath indeavoured by his words, actions, and counsels, to subvert the Fundamentall Lawes of England and Ireland, and to introduce an Arbitrary and Tyrannicall Government.

— This is the *envenomed Arrow* for which he inquired in the beginning of his *Replication* this day, which hath infected all his *Bloud*: This is that *Intoxicating Cup*, (to use his owne Metaphor) which hath tainted his *Judgement*, and poisoned his *Heart*: From hence was infused that *Specificall Difference* which turned his *Speeches*, his *Actions*, his *Counsels* into *Treason*; Not *Cumulative*, as he exprest it, as if many *Misdemeanours* could make one *Treason*, but *Formally* and *Essentially*. It is the *End* that doth informe *Actions*, and doth *specificate* the nature of them, making not onely *criminall*, but even *indifferent words* and *actions* to be *Treason*, being done and spoken with a *Treasonable intention*.

That which is given me in *charge*, is, to shew

shew the *quality* of the offence, how *hainous* it is in the *nature*, how *mischievous* in the effect of it; which will best appeare if it be examined by that *Law*, to which he himselfe appealed, that *universall*, that *supreme Law*, *Salus populi*: This is the *Element* of all *Laws*, out of which they are derived; the *End* of all *Laws*, to which they are designed, and in which they are perfected. How far it stands in opposition to this *Law*, I shall endeavour to shew in some *Considerations* which I shal present to your Lordships, all arising out of the *Evidence* which hath been opened.

The first is this: It is an offence comprehending all other offences; here you shall finde severall *Treasons*, *Murders*, *Rapines*, *Oppressions*, *Perjuries*.

The *Earth* hath a *Seminarie* vertue, whereby it doth produce all *Hearbs*, and *Plants*, and other *Vegetables*: There is in this *Crime*, a *Seminarie* of all evils hurtfull to a *State*; and if you consider the *reasons* of it, it must needs be so: The *Law* is that which puts a difference

betwixt good and evil, betwixt just and unjust ; If you take away the Law, all things will fall into a confusion, every man will become a Law to himselfe, which in the depraved condition of humane nature, must needs produce many great enormities : Lust will become a Law, and Envie will become a Law, Covetousnesse and Ambition will become Lawes ; and what dictates, what decisions such Laws will produce, may easily be discerned in the late Government of Ireland : The Law hath a power to prevent, to restraine, to repaire evils ; without this all kind of mischiefs and distempers will break in upon a State.

It is the Law that doth intitle the King to the Allegiance and service of his people ; it intitles the people to the protection and justice of the King. It is God alone who subsists by himselfe, all other things subsist in a mutuall dependence and relation. He was a wise man that said, that the King subsisted by the field that is tilled : It is the labour of the people that supports the Crowne : If you take away the protection of the King, the Vigour and cheerfulness of Allegiance will be taken away, though the Obligation remaine.

The

The *Law* is the *Boundarie*, the *Measure* betwixt the *Kings Prerogative*, and the *Peoples Liberty*: Whiles these move in their owne *Orbe*, they are a *support* and *security* to one another; The *Prerogative* a *cover* and *defence* to the *Liberty* of the *people*, and the *people* by their *liberty* are enabled to be a *foundation* to the *Prerogative*; but if these *bounds* be so removed, that they enter into *contestation* and *conflict*, one of these *mischiefes* must needs ensue: If the *Prerogative* of the *King* overwhelm the *liberty* of the *people*, it will be turned into *Tyrannie*; if *liberty* undermine the *Prerogative*, it will grow into *Anarchie*.

The *Law* is the *safeguard*, the *custody* of all *private interest*: Your *Honours*, your *Lives*, your *Liberties* and *Estates* are all in the *keeping* of the *Law*; without this, every man hath a like *right* to any thing, and this is the *condition* into which the *Irish* were brought by the *E. of Strafford*: And the *reason* which he gave for it, hath more *mischief* in it then the thing it selfe, *They were a Conquered Nation*. There cannot be a word more *pregnant*, and *fruitfull*
in

in *Treason*, then that word is: There are few *Nations* in the world that have not been *conquered*; and no doubt but the *Conquerour* may give what *Lawes* he please to those that are *conquered*: But if the *succeeding* *Pacts* and *Agreements* doe not limit and restrain that *Right*, what people can be secure? *England* hath been *conquered*, and *Wales* hath been *conquered*, and by this reason will be in little better case then *Ireland*. If the *King* by the *Right* of a *Conquerour* gives *Lawes* to his *People*, shall not the people by the same reason be restored to the *Right* of the *conquered*, to recover their liberty if they can? What can be more hurtfull, more pernicious to both, then such *Propositions* as these? And in these particulars is determined the first *Consideration*.

2. The second *Consideration* is this: This *Arbitrary* power is dangerous to the *Kings* *Person*, and dangerous to his *Crown*: It is apt to cherish *Ambition*, *usurpation*, and *oppression* in great men, and to beget *sedition* and *discontent* in the *People*; and both these have beene, and in reason must ever be causes of great trouble and alte.

alteration to Princes and States.

If the *Histories* of those *Easterne Countries* be perused, where *Princes* order their *affaires* according to the *mischievous principles* of the *E. of Strafford*, loose and absolved from all *Rules of Government*, they will be found to be frequent in *combustions*, full of *Massacres*, and of the *tragicall ends* of *Princes*. If any man shall look into our owne *Stories*, in the times when the *Laws* were most neglected, he shall find them full of *Commutations*, of *Civill distempers*; whereby the *Kings* that then reigned, were alwayes kept in want and *distresse*; the people consumed with *Civill wars*: and by such wicked *counsels* as these, some of our *Princes* have beene brought to such miserable *ends*, as no *honest heart* can remember without *horror*, and earnest *Prayer*, that it may never be so againe.

The third Consideration is this, The subversion of the *Lawes*; And this *Arbitrary power*, as it is dangerous to the *Kings Person* and to his *Crowne*, so is it in other respects very prejudiciall

3.

B

to

to his Majesty in his *Honour*, *Profit*, and *Greatnesse*; and yet these are the *gildings* and *paintings* that are put upon such *counsels*; These are for your *Honour*, for your *service*; whereas in truth they are contrary to both: But if I shall take off this *varnish*, I hope they shall then appeare in their owne *native deformity*, and therefore I desire to consider them by these *Rules*.

It cannot be for the *Honour* of a *King*, that his *sacred Authority* should be used in the practise of *injustice* and *oppression*; that his *Name* should be applyed to *patronize* such *horrid crimes*, as have beene represented in *Evidence* against the *Earle of Strafford*; and yet how frequently, how presumptuously his *Commands*, his *Letters* have been vouched throughout the course of this *Defence*, your Lordships have heard. When the *Judges* doe *justice*, it is the *Kings justice*, and this is for his *honour*, because he is the *Fountaine of justice*; but when they doe *injustice*, the offence is their owne: But those *Officers* and *Ministers* of the *King*, who are most officious in the exercise of this

Ar-

Arbitrarie power, they doe it commonly for their advantage; and when they are questioned for it, then they fly to the *Kings interest*, to his *Direction*: And truly my Lords, this is a very unequall *distribution* for the King, that the *dishonour* of evill *courses* should be cast upon him, and they to have the advantage.

The *prejudice* which it brings to him in regard of his *profit*, is no lesse apparent: It deprives him of the most beneficiall, and most certaine *Revenue* of his *Crowne*, that is, the *voluntary aids* and *supplies* of his *people*; his other *Revenues*, consisting of goodly *Demeanes*, and great *Manors*, have by *Grants* been alienated from the *Crowne*, and are now exceedingly *diminished* and *impaired*: But this *Revenue* it cannot be sold, it cannot be *burdned* with any *Pensions* or *Annuities*, but comes intirely to the *Crowne*. It is now almost fiftene years since his Majesty had any assistance from his *people*; and these illegall wayes of supplying the King were never prest with more *violence*, and *art*, then they have been in this time; and yet I may upon very good grounds affirm, that

in the last fifteene years of *Queen Elizabeth*, she received more by the *Bounty* and *Affection* of her *Subjects*, then hath come to His *Majesties* *Coffers* by all the *inordinate* and *rigorous* *courses* which have beene taken. And as those *Supplies* were more beneficiall in the *Receipt* of them, so were they like in the *use* and *employment* of them.

Another way of *prejudice* to his *Majesties* *profit*, is this : Such *Arbitrary* *courses* exhaust the people, and disable them, when there shall be occasion, to give such plentifull *supplies*, as otherwise they would doe. I shall need no other prooffe of this, then the *Irish* *Government* under my *L. of Strafford*, where the *wealth* of the *Kingdome* is so consumed by those horrible *exactions* and *burdens*, that it is thought the *Subsidies* lately granted will amount to little more then halfe the *proportion* of the last *Subsidies*. The two former wayes are hurtfull to the *Kings* *profit*, in that respect which they call *Lucrum Cessans*, by diminishing his receipts ; But there is a third, fuller of *mischiefe*, and it is in that respect which they call
Damnum

Dammum emergens, by increasing his *Disbursements*: Such *irregular* and *exorbitant* attempts upon the *Libertie* of the *people*, are apt to produce such miserable *distractions* and *distempers*, as will put the *King* and *Kingdome* to such vast *expences* and *losses* in a short time, as will not be recovered in many yeares: Wee need not goe farre to seeke a prooffe of this, these two last yeares will be a sufficient evidence, within which time I assure my selfe, it may be proved, that more *Treasure* hath beene wasted, more losse sustained by his *Majesty* and his *Subjects*, then was spent by *Queene Elizabeth* in all the War of *Tyrone*, and in those many brave *Attempts* against the *King* of *Spaine*, and the royall assistance which she gave to *France*, and the *Low-Countries*, during all her *Reigne*.

As for *Greatnesse*, this *Arbitrary* power is apt to hinder and impaire it, not onely at home, but abroad. A *Kingdome* is a society of men conjoynd under one Government, for the common good: The world is a society of *Kingdomes* and *States*. The *Kings* greatnesse

consists not onely in his *Dominion* over his *Subjects* at home, but in the *influence* which he hath upon *States* abroad; That he should be great even among *Kings*, and by his *wisdome* and *authority* so to incline and dispose the affaires of other *States* and *Nations*, and those great *events* which fall out in the *world*, as shall be for the good of *Mankind*, and for the peculiar *advantage* of his owne people. This is the most *glorious*, and *magnificent* greatness, to be able to relieve *distressed* *Princes*, to support his owne *friends* and *Allies*, to prevent the *ambitious* *designes* of other *Kings*; and how much this Kingdome hath been impaired in this kinde, by the late *mischievous* *counsels* your Lordships best know, who at a neerer distance, and with a more cleare sight, doe apprehend these publique and great affaires, then I can doe. Yet thus much I dare boldly say, that if his *Maiestie* had not with great *wisdome* and *goodness* forsaken that way wherein the *Earle* of *Strafford* had put him, we should within a short time have been brought into that *miserable* *condition*, as to have been uselesse to our *friends*, contemptible

temptible to our *enemies*, and uncapable of undertaking any great *designe* either at home or abroad.

A fourth Consideration is, That this Arbitrary, and Tyrannicall Power, which the *E. of Strafford* did exercise in his own person, and to which he did advise his Majesty, is inconsistent with the Peace, the Wealth, the Prosperity of a Nation; It is destructive to Justice, the Mother of Peace; to Industry, the Spring of Wealth; to Valour, which is the active vertue whereby the prosperity of a Nation can onely be procured, confirmed, and enlarged. 4.

It is not only apt to take away Peace, and so intangle the Nation with Warres, but doth corrupt Peace, and puts such a malignity into it, as produceth the Effects of warre. We need seek no other prooffe of this, but the *E. of Straffords* Government, where the *Irish*, both Nobility and others, had as little security of their *Persons* or *Estates* in this peaceable time, as if the *Kingdome* had been under the rage and fury of warre.

And.

And as for *Industrie*, and *Valour*, who will take pains for that, which when he hath gotten, is not his own? Or who fight for that wherein he hath no other *interest*, but such as is subject to the will of another? The *Ancient encouragement* to men that were to defend their *Countries* was this, That they were to hazard their *Persons*, *pro Aris & Focis*, for their *Religion*, and for their *Houses*; But by this *Arbitrary* way which was practised in *Ireland*, and counselled here, no man had any *certainty*, either of *Religion*, or of his *House*, or any thing else to be his own; But besides this, such *Arbitrary* courses have an ill operation upon the *courage* of a Nation, by embasing the *hearts* of the people: *A servile condition* doth for the most part beget in men a *slavish temper and disposition*. Those that live so much under the *Whip* and the *Pillory*, and such *servile Engines*, as were frequently used by the *E. of Strafford*, they may have the dregges of *courage*, *sullenness*, & *stubbornness*, which may make them prone to *Mutinies*, and *discontents*; but those *Noble* and *gallant affections*, which put men on *brave Designs* and *Attempts* for the

the preservation or enlargement of a Kingdome, they are hardly capable of. Shall it be *Treason* to embase the Kings Coyne, though but a piece of twelve-pence, or sixe-pence, and must it not needs be the effect of a greater *Treason*, to embase the spirits of his Subjects, and to set a stamp and Character of servitude upon them, whereby they shall be disabled to doe any thing for the service of the King or Common-wealth?

The fift Consideration is this, That the exercise of this Arbitrary Government, in times of sudden danger, by the invasion of an enemy, will disable his Majesty to preserve himselfe and his Subjects from that danger. This is the onely pretence by which the E. of Strafford, and such other mischievous Counsellors would induce his Majesty to make use of it; and if it be unfit for such an occasion, I know nothing that can be alledged in maintenance of it. 5.

When warre threatens a Kingdome by the coming of a forrain Enemy, it is no time then to discontent the people, to make them weary of the present Government, and more inclinable

to a *Change*; The *supplies* which are to come in this *way*, will be *unready, uncertain*; there can be no *assurance* of them, no *dependence* upon them, either for *time* or *proportion*: And if some money be gotten in such a way, the *Distractions, Divisions, Distempers*, which this course is apt to produce, will be more *prejudicial* to the *publique safety*, then the *supply* can be *advantageous* to it; and of this we have had *sufficient experience* the last *Summer*.

6. The sixth, That this *crime* of *subverting* the *Laws*, and *introducing* an *Arbitrary* and *Tyrannicall* Government, is *contrary* to the *Pact* and *Covenant* betwixt the *King* and his *people*. That which was spoken of before, was the *legall union* of *Allegiance* and *Protection*; this is a *personall union* by *mutuall agreement* and *stipulation*, confirmed by *oath* on both *sides*: The *King* and his *people* are *obliged* to one another in the *nearest relations*; He is a *Father*, and a *childe* is called in *Law*, *Pars Patris*: Hee is the *Husband* of the *Common-wealth*, they have the *same interests*, they are *inseparable* in their *condition*, be it *good* or *evill*; He is the *Head*,

Head, they are the *Body*; there is such an *incorporation* as cannot be dissolved without the *destruction* of both.

When *Iustice Thorpe*, in *Edw.* the *thirds time*, was by the *Parliament* condemned to death for *Bribery*, the *reason* of that *Judgement* is given, because he had *broken the Kings Oath*, not that he had broken his own *oath*, but that he had broken the *Kings oath*, that *solemn* and *great obligation*, which is the *security* of the *whole Kingdom*: If for a *Judge* to take a small *summe* in a private cause, was adjudged *Capital*, how much greater was this *offence*, whereby the *E. of Strafford* hath broken the *Kings Oath* in the whole *course* of his *Government* in *Ireland*, to the *prejudice* of so many of his *Majesties Subjects*, in their *Lives*, *Liberties*, and *Estates*, and to the danger of all the rest?

The *Doctrine* of the *Papists*, *Fides non est servanda cum Hæreticis*, is an *abominable Doctrine*: yet that other *Tenet* more *peculiar* to the *Iesuites* is more *pernicious*, whereby *Subjects* are discharged from their *Oath* of *Allegiance* to

their *Prince* whensoever the *Pope* pleaseth ; This may be added to make the *third* no lesse *mischievous* and *destructive* to *humane society*, then either of the rest ; That the *King* is not bound by that *Oath* which he hath taken to *observe* the *Laws* of the *Kingdome*, but may when he sees *cause*, lay *Taxes* and *burdens* upon them without their *consent*, contrary to the *Laws* and *Liberties* of the *Kingdome*. This hath been *preached* and *published* by divers ; And this is that which hath been *practised* in *Ireland* by the *E. of Strafford*, in his *Government there*, and indeavoured to be brought into *England*, by his *Counsell here*.

7. The seventh is this ; It is an *offence* that is contrary to the *end* of *Government* ; The *end* of *Government* was to prevent *oppressions*, to limit and restrain the excessive power and violence of *great men*, to *open* the passages of *Iustice* with *indifferency* towards all ; This *Arbitrary* power is apt to *induce* and *incourage* all kind of *insolencies*.

Another *end* of *Government* is to *preserve* men in their *estates*, to *secure* them in their
Lives

Lives and Liberties; but if this *Designe* had taken effect, and could have been *settled* in *England*, as it was *practised* in *Ireland*, no man would have had more certainty in his own, then power would have allowed him: But these two have been spoken of before, there are two behind more *important*, which have not yet been touched.

It is the *end* of *Government*, that *virtue* should be *cherisht*, *vice* *supprest*; but where this *Arbitrary* and *unlimited* power is set up, a way is open not onely for the *security*, but for the *advancement* and *incouragement* of *evil*; Such men as are aptest for the execution and maintenance of this Power, are onely capable of preferment; and others who will not be *instruments* of any *unjust* commands, who make a *conscience* to doe nothing against the *Laws* of the *Kingdome*, and *Liberties* of the *Subject*, are not onely not *passable* for *employment*, but *subject* to much *jealousie* and *danger*.

It is the *end* of *Government*, that all *accidents* and *events*, all *Counsels* and *Designes* should be improved to the *publique* good: But this *Arbi-*

trary Power is apt to dispose all to the maintenance of itself. The wisdom of the Councell-Table, the Authority of the Courts of Justice, the industry of all the Officers of the Crown have been most carefully exercised in this; the Learning of our Divines, the Jurisdiction of our Bishops have been moulded and disposed to the same effect, which though it were begun before the E. of Straffords Employment, yet it hath been exceedingly furthered and advanced by him.

Under this colour and pretence of maintaining the Kings Power and Prerogative many dangerous practises against the peace and safety of this Kingdome have been undertaken and promoted. The increase of Popery, and the favours and encouragement of Papists have been, and still are a great grievance and danger to the Kingdome: The Innovations in matters of Religion, the usurpations of the Clergie, the manifold burdens and taxations upon the people, have been a great cause of our present distempers and disorders; and yet those who have been chiefe Furtherers and Actors of
such

such Mischiefes, have had their Credit and Authority from this, That they were forward to *maintain* this Power. The E. of *Strafford* had the first rise of his greatnesse from this, and in his *Apologie* and *Defence*, as your *Lordships* have heard, this hath had a maine part.

The *Royall Power*, and *Majesty* of *Kings*, is most glorious in the *prosperity* and *happinesse* of the people; The perfection of all things consists in the *end* for which they were ordained, *God* onely is his own *end*, all other *things* have a further *end* beyond *themselves*, in attaining whereof their own happinesse consists: If the *means* and the *end* be set in *opposition* to one another, it must needs *cause* an *impotency* and *defect* of both.

The eight *Consideration* is, The *vanity* and *absurdity* of those *excuses* and *justifications* which he made for himself, whereof divers *particulars* have been mentioned in the *course* of his *Defence*.

8.

1. That

1. That he is a *Counsellor*, and might not be *questioned* for any thing which he advised according to his *conscience*; The ground is true, there is a *liberty* belongs to *Counsellors*, and nothing corrupts Counsels more then *fear*; He that will have the priviledge of a *Counsellor*, must keep within the just bounds of a *Counsellor*; those *matters* are the proper *Subjects* of *Counsell*, which in their times and occasions, may be good or beneficiall to the *King* or *Common-wealth*; But such *Treasons* as these, the *subversion* of the *Laws*, *Violation* of *Liberties*, they can never be good, or justifiable by any *circumstance*, or *occasion*; and therefore his being a *Counsellor*, makes his fault much more hainous, as being committed against a greater *Trust*, and in a way of much mischief and danger, lest his Majesties conscience and judgement (upon which the whole course and frame of his *Government* do much depend) should be poysoned and infected with such wicked principles and designs: And this he hath endeavoured to doe, which by all *Lawes*, and in all *times* hath in this *Kingdome* beene reckoned

a *Crime of an high Nature.*

2. He labours to *interest* your Lordships in his *cause*, by alledging, It may be *dangerous* to your selves, and your *Posterity*, who by your *birth* are fittest to be near his Majesty, in places of *Trust* and *Authority*, if you should be subject to be *questioned* for *matters* delivered in *Counsell*. To this was answered, that it was *hoped* their Lordships would rather *labour* to secure themselves, and their posterity, in the exercise of their *vertues*, then of their *vices*, that so they might together with their own *honour* and *greatnesse*, preserve the *honour* and *greatnesse*, both of the *King* and *Kingdome*.

3. Another *excuse* was this, that whatsoever he hath *spoken* was out of a good *intention*; Sometimes good and *evill*, *truth* and *falsehood* lie so near together, that they are hardly to be *distinguished*: Matters *hurtfull* and *dangerous* may be accompanied with such *circumstances* as may make it appeare usefull and convenient, and in all such *cases*, *good intentions* will justify *evill Counsell*; But where the

matters propounded are *evil* in their own nature, such as the *matters* are wherewith the E. of Strafford is charged, to *break a publique faith*, to *subvert Laws and Government*, they can never be justified by any intentions, how specious, or good soever they be pretended.

4. He *allegeth* it was a time of great necessity and danger, when such counsels were necessary for preservation of the State. Necessity hath been spoken of before, as it relates to the Cause; now it is considered as it relates to the Person; if there were any necessity, it was of his own making; he by his *evil* counsell had brought the King into a necessity, and by no Rules of *Iustice*, can be *allowed* to gain this advantage by his own fault, as to make that a *ground* of his justification, which is a great part of his offence.

5. He hath often *insinuated* this, That it was for his Majesties service in *maintenance* of that Sovereign Power with which he is *intrusted* by God for the good of his people. The Answer is this, No doubt but that Sovereign Power

Power, wherewith his Majesty is *intrusted* for the publique good, hath many glorious *effects*, the better to inable him thereunto; But without doubt this is none of them, That by his own will he may lay any *Taxe* or *Imposition* upon his people without their consent in *Parliament*. This hath now been five times adjudged by both *Houses*: In the Case of the *Loanes*, In condemning the *Commission* of *Excise*, In the Resolution upon the *Saving* offered to be added to the *Petition* of *Right*, In the sentence against *Manwaring*, and now lately, In condemning the *Ship-money*; And if the Sovereigne Power of the King can produce no such *effect* as this, the *Allegation* of it is an Aggravation, and no Diminution of his offence, because thereby he doth labour to interest the King against the just grievance and complaint of the People.

6. This *Counsell* was propounded with divers *limitations*, and *Provisions*; for securing and repairing the *liberty* of the people. This implies a *contradiction* to maintain an *Arbitrary* & absolute Power, and yet to restrain it with

limitations, and *provisions*; for even those *limitations* and *provisions* will be subject to the same absolute *Power*, and to be dispensed in such manner, and at such time, as it self shall determine; let the *grievances* and *oppressions* be never so heavy, the *Subject* is left without all remedy, but at his Majesties own pleasure.

7. He alledgeth, they were but *words*, and no *effect* followed: This needs no answer, but that the *miserable distempers* into which he hath brought all the three Kingdomes, will be evidence sufficient that his wicked *Counsell*s have had such *mischievous* effects within these two or three last years, that many years peace will hardly repaire those losses, and other great mischiefs which the *Common-wealth* hath sustained.

These excuses have been collected out of the severall parts of his *Defence*; perchance some others are omitted, which I doubt not have been answered by some of my *Collegues*, and are of no importance, either to perplex or to hinder your Lordships judgement,

ment, touching the hainousnesse of this Crime.

The ninth *Consideration* is this, That if this be *Treason*, in the nature of it, it doth exceed all other *Treasons* in this, That in the Design, and endeavour of the Author, it was to be a *constant* and a *permanent Treason*; other *Treasons* are transient, as being confinde within those particular *aſſions* and *proportions* wherein they did consist, and those being past, the *Treason* ceaseth. 9.

The *Powder-Treason* was full of horror and malignity, yet it is past many years since; The murder of that *Magnanimous* and *glorious King*, *Henry the fourth of France*, was a great and horrid *Treason*; And so were those manifold attempts against *Qu. Elizabeth* of blessed memory; but they are long since past, the *Deteſtation* of them only remains in *Histories*, and in the *minds* of men; and will ever remain; But this *Treason*, if it had taken effect, was to be a standing, perpetuall *Treason*, which would have been in *continuell aſſ*, not *determined* within one *time* or *age*, but *transmiſſed* to *Posterity*, even from *generation* to *generation*.

10.

The tenth *Consideration* is this, That as it is a Crime odious in the nature of it, so it is odious in the judgement and estimation of the *Law*; To alter the settled *frame* and *constitution* of *Government*, is *Treason* in any *estate*; The *Laws* whereby all other parts of a Kingdome are preserved, should be very vain and defective, if they had not a *power* to secure and preserve *themselves*.

The *forfeitures* inflicted for *Treason* by our *Law*, are of *Life*, *Honour*, and *Estate*, even all that can be *forfeited*, and this Prisoner having committed so many *Treasons*, although he should pay all these *forfeitures*, will be still a Debtor to the *Common-wealth*: Nothing can be more equall then that he should perish by the Justice of that *Law* which he would have subverted; Neither wil this be a new way of blood; There are marks enough to trace this *Law* to the very originall of this Kingdome: And if it hath not been put in execution, as he alledgeth, this 240. years, it was not for want of *Law*, but that all that time hath not bred a man bold enough to commit such Crimes as these; which

which is a *circumstance* much aggravating his offence, and making him no whit lesse liable to punishment, because he is the onely man that in so long a time hath ventured upon such a *Treason* as this.

It belongs to the charge of another to make it appear to your Lordships, that the Crimes and Offences proved against the *Earle of Strafford*, are *High Treason* by the Lawes and Statutes of this Realm, whose learning and other abilities are much better for that service. But for the time and manner of performing this, we are to resort to the *Direction* of the *House of Commons*, having in this which is already done, dispatched all those instructions which wee have received; and concerning further proceedings, for clearing all Questions and Objections in Law, your Lordships will hear from the *House of Commons* in convenient time.

F I N I S.

A N
ARGVMENT
of Law concerning
the Bill of ATTAINDER of
HIGHTREASON of
THOMAS
Earle of *Strafford*:

At a Conference in a Committee
of both Houses of Parliament.

By Mr. St. JOHN his *Majesties* Solicitor
GENERAL.

Published by order of the Commons House.



L O N D O N,

Printed by *G.M.* for *John Bartlet* at the signe of the gilt
Cup, neare *S. Austins-gate* in *Pauls Church-yard*,

1641.

ARGUMENT

HARVARD COLLEGE LIBRARY

FROM THE LIBRARY

OF F. L. GAY

JUNE 1, 1907

of LAW CONCERNING

the Bill of ATTAINMENT

of THOMAS

THOMAS

At a Conference in a Committee

of both Houses of Parliament

by Mr. S. J. ...

GENERAL

Published by order of the Committee

LONDON

Printed by G. H. ...

Copyright ...

1841

...

...

...



M^r. SIOHN^s Argument.

My Lords,



HE Knights, Citizens,
and Burgesſes of the
Commons Houſe of
Parliament, have paſ-
ſed a Bill for the ar-
tainting of *Thomas*
Earle of *Strafford* of
High-Treſon. The
Bill hath been transmitted from them to your
Lordſhips. It concernes not him alone, but
your Lordſhips and the Commons too,
though in different Reſpects.

It is to make him as miserable a man, as man or Law can make him.

Not losse of life alone, but with that, of honour, name, posterity, and estate, Of all thats deare to all.

To use his owne expression, an eradication of him both root and branch, as an *Achan*, a troubler of the State, as an execrable, as an accursed thing.

This Bill as it concernes his Lordship the highest that can be in the penall part, so doth it on the other side as highly concerne your Lordships and the Commons in that which ought to be the tendrest, the Judicatory within, that that Judge not them who judge him: And in that which is most sacred amongst men, the publike Justice of the Kingdome.

The Kingdome is to be accounted unto for the losse of the meanest member, much more for one so neare the head.

The Commons are concerned in their Account for what is done, your Lordships in that which is to be done.

The Businesse therefore of the present Conference, is to acquaint your Lordships with those things that satisfied the Commons in passing of this Bill, such of them as have come within my capacity, and that I can remember, I am Commanded from the Commons at this time to present unto your Lordships.

My

My Lords, in Judgements of greatest moment, there are but two waies for satisfying those that are to give them; Either the *Lex lata*, the Law already established, Or els the use of the same power for making new Lawes, whereby the old at first received life.

In the first consideration, of the settled Lawes; In the degrees of punishment the positive Law received by generall consent, and for the common good is sufficient to satisfy the Conscience of the Judge in giving Judgement according to them.

In severall Countries there is not the same measure of punishment for one and the same offence. Wilfull murder in *Ireland* is Treason, and so is the wilfull burning of a house or stacke of Corne. In the Isle of *Man*, it's felony to steale a Hen, but not to steale a Horse; and yet the Judge in *Ireland* hath as just a ground to give Judgement of high Treason in those Cases there, as here to give Judgement onely of Felony, and in the Isle of *Man* of Felony for the Hen, as heere of pettie Larceny.

My Lords, in the other consideration of using the Supream power, the same Law gives power to the Parliament to make new Lawes, that enables the inferiour Court to judge according to the old. The rule that guides the conscience of the Inferiour Court is from without; the prescripts of the Parlia-

ment and of the Common Law; in the other the rule is from within; That *salus populi* be concerned; That there be no willfull oppression of any the fellow members, that no more blood be taken then what is necessary for the Cure, the Lawes and Customes of the Realme as well enable the exercise of this, as of the ordinary and Judiciall power.

My Lords, what hath beene said is because that this proceeding of the Commons by way of Bill implies the use of the meere *Legis-Lative* power, in respect new Lawes are for the most part past by Bill.

This, my Lords, though just and Legall, and therefore not wholly excluded, yet it was not the only ground that put the Commons upon the Bill, they did not intend to make a new Treason, and to condemne my Lord of *Strafford* for it, they had in it other Considerations likewise, which were to this effect,

I.

First, the Commons knew that in all former ages, if doubts of Law arose upon cases of great and generall Concernement, the Parliament was usually consulted withall for resolution, which is the reason that many Acts of Parliament are onely declarative of the Old Law, not introductive of a new, as the great Charter of our Liberties;

ties; the Statute of the five and twentieth
yeare of *Edward* the third, of Treasons;
the Statute of the Prerogative, and of here
the petition of right. If the Law were
doubtfull in this Case, they conceived the
Parliament (where the old may be altered,
and new Lawes made) the fittest Iudge to
cleare this doubt.

Secondly, my Lords, they proceeded
this way to our those scruples and delays
which through dilute of proceedings of this
nature might have risen in the manner and
way of proceeding, since the Statute of the
first of *Henry* the fourth, the seventeenth
Chapter, and more fully in the Roll, num-
ber 144. The proceedings in Parliament
have usually bene upon an Indement
first found, though in Cases of Treason par-
ticularly mentioned in the Statute of the
five and twentieth yeare of *Edward* the
third, which had not been done in this Case:
Doubts likewise might rise for Treasons,
not particularly mentioned in the Statute of
25. *Edw. 3.* whether the declaratory power
of Parliament be taken away, and if not
taken away, in what manner they were to
be made and by whom. They finde nor
any Attainders of Treason in Parliament
for neare this 200. yeares, but by this way
of Bill. And againe they knew that what soe-
ver could be done any other way, it might
be done by this.

2.

Thirdly, in respect of the proofes and depositions that have beene made against him; for first, although they knew not but that the whole Evidence which hath beene given at the Barre, in every part of it is sufficiently comprehended within the Charge, yet if therein they should be mistaken, if it should prove otherwise, use may justly be made of such Evidence in this way of Bill, wherein so as Evidence be given in, it's no way requisite that there should have beene any Articles or Charge at all. And so in the Case of double Testimony upon the Statute of the first of *Edward* the sixth, whether one direct witness with others to Circumstances, had been single or double testimony, and although single Testimony might be sufficient to satisfie private Consciences, yet how farre it would have beene satisfactory in a judiciall way where formes of Law are more to be stood upon was not so cleare, whereas in this way of Bill private satisfaction to each mans Conscience is sufficient, although no Evidence had beene given in at all.

My Lords, the proceeding by way of Bill, it was not to decline your Lordships Justice in the judiciall way; In these Exigencies of the State and Kingdome, it was to husband time by silencing those doubts, they conceived in the speediest and the surest way.

My

My Lords. These are in effect, the things the Commons tooke into their Consideration, in respect of the manner, and way of proceeding against the Earle. In the next place I am to declare unto your Lordships, the things they tooke into their consideration, in respect of the matter and merits of the Cause. They are comprehended within these 6. heads.

1. That there is a Treason within the Statute of 25. E. 3. by Levying of warre upon the matter of the fifteenth Article.

2. If not by actuall Levying of warre, yet by advising and declaring his intention of warre, and that by *Savils* warrant, and the advice of bringing over the Irish Army, upon the matter in the 23. Article. The intending of a Warre if not within the Clause of Levying Warre in the Statute of 25. E. 3. yet within the first Treason of compassing the death of the King.

3. If neither of these two single Acts be within the Statute of 25. E. 3. yet upon putting all together, which hath beene proved against him. That there's a Treason within the first clause of compassing the death of the King.

Et si non profunt singula juncta juvant.

4. That he hath raised and laid Soldiers upon the Subjects of Ireland against their will, and at their Charge, within the Irish Statute, of the eighteenth yeare of

Henry the first. That both person and thing are within the Statute, That the Statute remaines in force to this day, That the Parliament here hath Cognizance of it, And that even in the ordinary way of Judicature, that if there be a Treason, and a Traitor, that the want of jurisdiction in the Judicall way, may justly be supplied by Bill.

5. That his endeavouring to subvert the fundamentall Lawes and Government of the Realmes of *England* and *Ireland*, and instead thereof, to introduce a tyrannicall Government against Law, is Treason by the Common Law. That Treasons at the Common Law are not taken away by the Statutes of 25.E.3.1.H.4.c.10. 10.Mar.0.1. nor any of them.

6. That as this Case stands, It's just and necessary for resort to the Supreme power in Parliament, in case all the rest should faile.

Of these six, five of them are Treasons, within the Compasse of the Lawes already established. Three within the Statute of 25.E.3. One within the *Dish* Statute, the other by the Common Law of *England*.

If but any one of these 6. Considerations should. The Commons conceive that upon the whole matter they had good cause to passe the Bill.

My

My Lords, for the first of levying Warre, I shall make bold to read the Case to your Lordships before I speake to it, its thus. r.
The Case.

The Earle did by warrant under his hand and Seal give authority to *Robert Savill* a Serjeant at Arms, and his Deputies to fesse such number of Souldiers, horse and foote of the Army in *Ireland* together with an officer, as the Serjeant should thinke fit, upon his Majesties Subjects of *Ireland* against their will: This warrant was granted by the Earle to the end to compell the Subjects of *Ireland* to submit to the unlawfull Summons and orders made by the Earle upon paper-Petitions exhibited unto him in case of private Interest betweene party and party; This warrant was executed by *Savill* and his Deputies by fessing of Souldiers both horse and foote, upon diverse of the Subjects of *Ireland* against their will in warre-like manner, and at divers times the Souldiers continued upon the parties upon whom they were fessed, and wasted their goods, untill such time as they had submitted themselves unto those Summons and orders.

My Lords, This is a levying of warre within the statute of 25°.E.3. The words of the Statute are, *If any man doe levy warre against our Lord the King in his Realm;* this is declared to be Treason.

I shall indeavour in this to make it appeare to your Lordships.

1. What shall be a levying of Warre, in respect of the motive or cause of it.

2. What shall bee said a levying of warre in respect of the Action or thing done.

3. And in the third place, I shall apply them to the present Case.

It will bee granted in this of levying of warre, That forces may bee raised, and likewise used in a warre-like manner, and yet no levying of warre within the Statute, that is, when the forces are raised and employed upon private ends either of revenge or interest.

Before this Statute in *E. 1.* time. The Title of a Castle was in difference between the Earles of *Hereford* and *Gloster*, for the maintaining of the possession on the one side, and gayning of it on the other, Forces were raised on either side of many hundred men, they marched with Banners displayed one against the other. In the Parliament in the 20. yeere of *Edw. 1.* this adjudged onely trespasse, and either of the *Earls* fined a 1000. markes a peece.

After the Statute in Hillary Terme, the fiftieth yeere of *Edward* the third, in the *Kings Bench*, *Rot. 3.* *Nicholas Huntercome* in a warre-like manner, with 40. men armed, amongst other weapons, with Gunnes, (so antient as appeares by that Record they were,) did much spoyle in the Manor of the *Abbee of Dorchester*, in the County

County of Oxford: This no Treason: So it hath beene held by the Judges, that if one or more Townships upon pretence of saving their Commons, doe in a forcible and warre-like manner, throwe in Inclosures; This is onely a Riot, noe Treason.

The words of the Statute of 25. E. 3. cleare this Point, that if any man ride armed openly or secretly with men at Armes against any other to kill and robbe, or to detain him untill hee hath made fine and rancome for his deliverance; this is declared not to bee Treason, but Fellony or Trespasse, as the case shall require, all the printed Statutes which have it covertly or secretly are mis-printed; for the words in the Parliament Roll, as appeares n. 17. are *Discoverment ou secretment* openly or secretly.

So that my Lords, in this of levying warre, the Act is not so much to bee considered, but as in all other Treasons and Fellonies, *quo animo*, with what intent and purpose.

My Lords, If the end bee considerable in levying warre; it may bee said, that it cannot bee a Treason warre, unlesse against the King: For the wordes of the statute are, *If any man levy warre against the King.* *Object.*

That these words extend further then to *Answ.*
B 3
the

the Person of the King appeared by the wordes of the Statute, which in the beginning declares it to be Treason to compassse and imagine the Kings death, and after other Treasons, this isto be declared to be Treason, to levy warre against the King. If the levying of warre extend no further then to the person of the King. These words of the Statute are to no purpose, for then the first Treason of compassing the Kings death had fully included it before, because that hee which levies warre against the person of the King doth necessarily compassse his death.

Its a warre against the King when intended for alteration of the Lawes or Government in any part of them, or to destroy any of the great Officers of the Kingdome. This is a levying of Warre against the King.

1. Because the King doth protect and maintaine the Lawes in every part of them, and the great Officers to whose care hee hath in his owne freedde delegated the Execution of them.

2. Because they are the Kings Lawes, Hee is the Fountaine from whence in their severall Channels, they are derived to the Subject, all our inditeiments run thus, *Trespasses laied to bee done, Contrapacem Domini Regis*, the Kings peace for exorbitant offences, though not intended against the Kings Person,

Person, against the King his Crowne and Dignity.

My Lords, this construction is made good by diverse Authorities of great weight ever since the statute of 25.E.3. down-wards.

In R. the 2^d time Sir *Thomas Talbot* conspired the death of the Dukes of *Glocester* and *Lancaster*, and some other of the Peeres, for the effecting of it, hee had caused diverse people in the Countrey of *Chester* to be armed in warre-like manner, in Assemblies. In the Parliament held the seventeenth yeere of *Richard* the second, number the 20. Sir *Thomas Talbot* accused of high Treason for this; Its there declared, that insomuch as one of them was Lord high Steward of *England*, and the other high Constable of *England*, that this was done in destruction of the estates of the Realme, and of the Lawes of the Kingdome, and therefore adjudged Treason; and the judgement sent downe into the Kings Bench, as appears *Easter-Tearme* in the seventh yeere of *Richard* the second in the Kings Bench, Rot. 16. These two Lords had appeared in the eleventh yeere of *Richard* the second in maintenance of the Act of Parliament made the yeare before, one of them was of the Commissioners appointed by Parliament, and one of the Appellours of those that would have overthrowne it. The Duke of *Lancaster* likewise was one of

of the Lords that was to have bene indicted of Treason for endeavouring the maintenance of it, and therefore conspiring of their deaths is said to be in destruction of the Lawes; This there declared to bee a Treason that concerned the Person of the King and the Common-wealth.

In that great insurrection of the Villains and meaner people in *Richard* the seconds time, they tooke an oath, *Quod Regi & Communibus fidelitatem servarent*, to bee true to the King and Commons, that they would take nothing but what they paid for, punished all theft with death, heere's no intendment against the person of the King. The intent was to abolish the Law of villinage and servitude, to burne all the Records, to kill the Judges, this in the Parliament of the fifth yeere of *Richard* the second, number the one and thirtieth and two and thirtieth, the first part, is declared to be Treason against the King and against the Law.

In the eleventh yeere of *Richard* the second, in Parliament the raising of forces against the Commissioners appointed by act of Parliament the year, before adjudged Treason by all the Judges.

The Statute of 1. *Mar. cap. 12.* inacts, that if twelve or more shall endeavour by force to alter any of the Lawes or Statutes of the Kingdome, hee shall from such a time

time there limited bee adjudged onely as a fellow; This act was to continue but to the next Parliament, it is expired; it shewes by the words onely that the offence was higher before the making of it.

My Lords, In Queene *Elizabeths* time, *Grant* and diverse Prentices of *London* to the number of 200. rose and assembled at Tower-hill, carried a Cloake upon a Pole in steede of a banner, their intent was to deliver divers Prentices out of prison that had beene committed upon a sentence in Star-Chamber for ryots, To kill the Lord Major of *London*, and for setting prices on victuals. In *Trinity Terme* 37. *Eliz.* divers of the Iudges consulted withall, and resolved that this was a levying of warre against the Queene, being intended against the government and officers of the Queen, and thereupon *Grant* and others executed as Traitors.

Afterwards in that Queenes time, divers of the County of *Oxford* consulted together to goe from house to house in that County, and thence to *London* and other parts to excite them to take Armes for the throwing in of all inclosures throughout *England*, nothing was done, nor no Assembly: The Statute of 13. *Eliz. cap. 1.* during the Queenes life made it Treason to intend or advise to levy war against the Queen.

In *Easter Terme*, 39. *Eliz.* All the Iudges of *England* met about the case, it was resolved by them, that this was a warre intended against the *Queene*, they agreed that if it had beene of one Towneship or more upon private interest and claime of right of Common, it had not been Treason; But this was to throw in all inclosures thorough the Kingdome, whereto these parties could pretend no claime; that it was against the Law, in regard that the Statute of *Merton* gave power of Inclosures in many Cases. Upon this Resolution *Bradshaw* and *Burton* were executed at *Aynestowe* hill in *Oxford-shire*, the place where they intended their first meeting.

So that, my Lords, if the end of it be to overthrow any of the Statutes, any part of the Law and settled Governement, or any of the great Officers intrusted with the execution of them; this is a warre against the King.

My Lords, it will be further considerable, what shall be accounted a leavying of warre in respect of the Actions and things done; There's a designe to alter some part of the Lawes and present Governement, for the effecting thereof people bee provided of Armes, gathered together into troopes, but afterwards march not with Banners displayed, nor doe *Bellum percutere*. Whether the
arming

arming themselves and gathering together upon this Designe, whether this be a warre or such prosecution of the Designe with force as makes it Treason within the Statute?

First, If this be not a Warre in respect that it necessarily occasions hostile preparations on the other side?

2. From the words of the Statute, shall levy warre, and bethereof probably attained of open Deed by people of their Condition, although the bare conspiring be not an open Deed, yet whether the arming and drawing men together be not an open Declaration of Warre?

In Sir *Thomas Talbots* case before cited in the seventeenth yeere of *Richard* the second, The Acts of force are expressed in the Parliament Roll. That hee caused divers of the people of the County of *Chester* to bee armed in a warre-like manner in assemblies; heere is no marching, no bauners displayed.

In the 28. yeare of *Henry* the 6th. *William Bell* and *Thomas Lacy* in Com^r *Kent*. conspired with *Thomas Cheney*, called the *Hermite* of the *Queene of Faires* to overthrow the Lawes and customes of the Realme, and for the effecting of it, they with two hundred more met together, and concluded upon a course of raising greater forces in the county of *Kent*, and the adjacent Shires, this adjudged Treason, these were open Actes.

My Lords, for the application of both these to the Case in question.

First in respect of the end of it, here was a warre against the King, It was to subvert the Lawes, This being the designe, for the effecting of it, he assumed to his owne person, an arbitrary power over the lives, liberties and estates of his Majesties Subjects, and determined Causes upon paper petitions at his owne will and pleasure, obedience must be forced by the Army, this declared by the Warrant.

If it bee said, That the Warrant expresseth not any intent of subverting the Lawes, It expresseth fully one of the principall meanes whereby this was to be done, that is, obedience to his arbitrary orders upon paper petitions, this was done in reference to the maine designe.

In the Cases of the Towne of *Cambridge* and *St. William Cogon*, that have formerly bene cited to your Lordshippes, upon other occasions, the things in themselves were not Treason, they were not a levying of Warre.

In that of *Cambridge*, the Townesmen met together, and in a forcible manner broke up the University treasury, and tooke out of it the Records and Evidence of the liberties of the University over the Towne.

In the other, they of *Bridgewater* marched to the Hospitall, and compelled the Master

Master of the Hospitall to deliver unto them certaine Evidences that concerned the Towne, and forced him to enter into a bond of two hundred pound.

These, if done upon these private ends alone, had not beene Treason, as appeares by the very words of the Statute of 25. *Edw.* 3. before mentioned of marching openly or secretly.

But my Lords, these of *Cambridge* and *Bridgewater*, they were of the conspiracy with the villaines, as appeares in the Parliament Roll of the fift yeare of *Richard* the second, number the one and thirtieth, and two and thirtieth, where the Townes of *Cambridge* and *Bridgewater* are expressely excepted out of the generall pardon made to the Villaines. This being done in Reference to that designe of the villains of altering the Lawes, this it was that made it Treason.

If the designe went no further then the enforcing obedience to these paper orders made by himselfe, It was sufficient, it was to subvert one fundamentall part of the Lawes, nay in effect the whole Law; what use of Law if hee might order, and determine of mens estates at his owne pleasure; This was against the Law notoriously declared in *Ireland*.

In the close roll in the Tower, in the five and twentieth yeare of *Edw.* 1. a Writ went

to the Justices in *Ireland*, (that Kingdome at that time was governed by Justices) declaring that upon petitions they were not to determine any titles betweene party and party upon any pretence of profit whatsoever to the King.

In the eight and twentieth yeare of *Henry* the sixt the second Chapter, Suites in equity, not before the Deputy, but in Chancery, Suits at Common Law, not before him, but in Cases of life in the Kings Bench, for title of land or goods in the proper Courts of the Common pleas, or Kings Bench.

This declared in the Instructions for *Ireland* in the latter end of King *James* his time, and by the Proclamation in his Majesties time; my Lord took notice of them, called the Commissioners narrow hearted Commissioners.

The Law said, he should not thus proceed in subversion of it, he saith, he will, and will enforce obedience by the Army. This is as much in respect of the end as to endeavour the overthrow of the Statutes of Laborers, of victualls, or of *Merton* for Inclosures. Here is a warre against the King in respect of the end.

2. In respect of the Actions, whether there be either a levying of warre, or an open deed, or both.

My Lords, there was an Army in *Ireland* at that time of two thousand horse and foot,
by

by this Warrant there is a full designation of this whole Army, and an Assignement of it over unto *Savill* for this purpose. The Warrant gives him power from time to time to take as many Souldiers, horse and foot, with an Officer, throughout the whole Army as himselfe shall please, heere is the terrour and awe of the whole Army to enforce obedience. My Lords, if the Earle had armed two thousand men, horse and foot, and formed them into companies to this end, your Lordships would have conceived that this had beene a warre, It's as much as in the case of *Sir Thomas Talbot* who armed them in assemblies.

This is the same with a breach of trust added to it. That Army was first raised and afterwards committed to his trust for defence of the people, is now destined by him to their destruction. This assignation of the Army by his Warrant under his hand and seale is an open Act.

My Lords, heer's not onely an open act done, but a levying of warre, Souldiers both horse and foot, with an Officer in warlike manner sessed upon the Subject, which killed their Cattell, consumed and wasted their goods.

O, but five or sixe were the most employed at any time, a mighty warre of six men, scarce a Ryot.

Your Lordships observe a great difference

rence where fix single men goe upon a designe alone, and when sent from an Army of six hundred, all engaged in the same service, so many were sent as were sufficient to execute the Command, if upon a poore man fewer, more upon a rich, if the fix had not beene able, the whole Army must make it good; the reason that the Sheriffe alone, or with but one Bayliffe to doe execution, is, because hee hath the Command of the Law, the Kings Writ and the *posse Comitatus* in case of Resistance; heer's the warrant of the Generall of an Army, heer's the *posse exercitus*, the power of the Army, under this awe of the whole Army, fix may force more then sixty without it, and although never above fix in one place, yet in the severall parts of the Kingdome at the same time might be above sixty; for setting of Souldiers was frequent, it was the ordinary course for execution of his orders.

The Lord Lievetenant of a County in *England* hath a designe to alter the Lawes and governement, nay admit the designe goes not so high, hee onely declares thus much, that he will order the freeholds and estates of the Inhabitans of the County at his owne will and pleasure, and doth accordingly proceed upon paper petitions, foreseeing there will be disobedience; he grants out warrants under his hand and seale

to

to the deputy Lieutenants and Captains of the traine bands, that upon refusall they shall take such number of the traine bands thorow the County with Officers as they shall think good, and lay them upon the lands and houses of the refusers; Souldiers in a warlike manner are frequently sessed upon them accordingly. Your Lordships doe conceive that this is a levying of Warre within the Statute.

The Case in question goes further in these two Respects.

That it is more against the declared Law in *Ireland*, not onely against the Common Law, but likewise against the Statute of the eight and twentieth yeare of *Henry* the sixt, against the Acts of the Commissioners, against Proclamations in pursuance of the Law, against that himselfe took notice of, narrow hearted Commissioners.

In this that here was an Army, the Souldiers, Souldiers by profession, Acts of hostility from them of greater Terror then from free-holders of the same County.

My Lords, I have now done with the first of levying warre.

The second is the machination, the advising of a warre; The Case in this rests upon the Warrant to *Savill*, and the advice in the 23 Article.

The Warrant shewes a resolution of employing the old Army of *Ireland*, to the oppression

profession of his Majesties Subjects and the
 Lawes.

In the 23rd Article having told his Majesty that he was loosed and absolved from rules of Government and might doe every thing which power might admit, hee proceeded further in speech to his Majesty, in these words; You have an Army in Ireland You may employ to reduce this Kingdome.

My Lords, both being put together, ther's a machination, a practise, an advise to levy warre, and by force to oppresse and destroy his Majesties Subjects.

Object.

It hath beene said, the Statute of 25. Edw. 3. is a penall Law, and cannot bee taken by equity and Construction, there must be an actuall warre; the Statute makes it Treason to counterfeit the Kings Coyne, the conspiring, the raising of furnaces is no Treason, unlesse he doth *nummum percutere*, actually coyne.

Ans^r.

My Lords, this is onely said, not proved, the Law is otherwise, 19. of Henry the sixt, fol. 47. there adjudged that the conspiring and ayding to counterfeit coyne was Treason, and Iustice *Stamford*, fol. 3. & 44. is of opinion, That this or conspiring to counterfeit the great Seale is Treason. The Statute is, If any shall counterfeit the great Seale, conspiring to doe it by the book is Treason; if a man take the broad Seale from one Patent, and put it to another here

here is no counterfeiting, its ~~intention~~
and therefore Treason, as is adjudged in 2.
Henry 4. fo. 23. and by the opinion of
Stamford.

If machination or plotting, a warre be
not within that clause of the Statute of lo-
uying warre, yet its within the first of
compassing the death of the King, as that
which necessarily tends to the destruction
both of the King and of the people, upon
whose safety and protection he is to engage
himselfe. That this is Treason hath beene
adjudged both after the Statutes of the first
of *Henry the fourth* Chapter the tenth, & the
first of *Queene Mary the first* Chapter, so
much insisted upon on the other side. In the
third yeare of King *Henry the fourth*, one
Balshall comming from *London*, found one
Barnard at plough in the Parish of *Osley* in
the County of *Hertford*. *Barnard* asked *Bal-*
shall, what newes, he told him the newes
was, That King *Richard the second* was alive
in *Scotland* (which was false, for he was
then dead) and that by *Michaelmas* next he
would come into *England*. *Barnard* asked
him, what was best to be done, *Balshall* an-
swered, get men, and goe to King *Richard*.
In *Michaelmas* Terme, in the third yeare
of *Henry the fourth* in the Kings Bench, rot.
4. this advise of warre adjudged Treason.

In *Queene Marys* time, *Sir Nicholas*
Throckmorton conspired with *Sir Thomas*

W^ho to levy warre within this Realme for alteration in Religion, he joynded not with him in the execution. This Conspiraey alone declared to be Treason by the Judges. This was after the Statute of the first of *Queene Mary* so much insisted upon. That Parliament ended in *October*, this opinion was delivered the *Easter-Tearme* after, and is reported by *Justice Dyer, fo. 98.* It's true, *Sir Thomas Wyat* afterwards did levy warre, *Sir Nicholas Throgmorton* hee onely conspired, this adjudged Treason.

Storie, in *Queene Elizabeths* time, practised with Forreiners to levy warre within the Kingdome, nothing done in pursuance of the practise. The intent without any adhering to Enemies of the *Queene* or other cause adjudged to be Treason, and he executed thereupon. It's true my Lords, that yeare 13. *Elizabeth* by Act of Parliament, it's made Treason to intend the levying of warre, this Case was adjudged before the Parliament. The Case was adjudged in *Hilary Terme*, the Parliament began not untill the *Aprill* following; This my Lords, is a Case adjudged in point, That the practising to levy warre, though nothing be done in execution of it is Treason.

object.

It may be objected that in these Cases, the conspiring being against the whole Kingdome

dome included the Queene, and wasa compassing her destruction, as well as of the Kingdome, heere the advise was to the King.

The Answer is, first, that the warrant was unknowne to his Majesty, that was a machination of warre against the people and Lawes, wherein his Majesties person was engaged for protection. *Ans.w.1.*

That the advice was to his Majesty, aggravates the offence, it was an Attempt not only upon the Kingdome, but upon the Sacred Person, and his office too; himsele was *hostis patriæ*, he would have made the Father of it so too; nothing more unnaturall, more dangerous; To offer the King poyson to drink, telling him that it is a Cordiall, is a compassing of his death. The poyson was repelled, there was an antidote within, the malice of the giver beyond expression. The perswading of Forreiners to invade the kingdome holds no proportion with this, Machination of warre against the Lawes or kingdome is against the King they cannot be severed. *2.*

My Lords, if no actuall warre within the Statute, if the counselling of a warre, if neither of these single Acts be Treason within the Statute; The Commons in the next place have taken it into their consideration, what the addition of his other words, Counsells, and Actions do operate in the Case, and have conceived, That with this addition all being *The 3. General Head*

put together, that he is brought within the Statute of 25. *Edward* 3.

The words of the Statute are, if any man shall compasse or imagine the death of the King, the words are not, if any man shall plot or consult the death of the King, no my Lords, they go further then to such things as are intended immediately, directly, and determinatively against the life and person of the King, they are of a larger extent, to compasse is to doe by Circuit, to consult or practice another thing directly, which being done, may necessarily produce this effect.

However it be in the other Treasons within this Statute, yet in this by the very words there is roome left for constructions, for necessary Inferences and Consequences.

What hath beene the judgement and practice of former times concerning these words of compassing the Kings death will appeare to your Lordships by some Cases of attainders upon these words.

One *Owen* in King *James* his time in the 13. yeare of his raigne at *Sandwich* in *Kent*, spake these words, That King *James* being excommunicated by the Pope, may be killed by any man; which killing is no murther: being asked by those he spake too, how he durst maintaine so bloody an assertion, hee answered that the matter

was

was not so heynous as was supposed; for the King who is the lesser is concluded by the Pope who is the greater, and as a Malefactor being condemned before a Temporall Judge may be delivered over to be Executed, so the King standing convicted by the Popes sentence of excommunication may justly be slaughtered without fault, for the killing of the King is the execution of the Popes supream sentence, as the other is the execution of the Law; for this, judgement of High-Treason was given against him, and execution done.

My Lords, here is no cleere intent appearing that *Owen* desired the thing should bee done, onely Arguments that it might bee done, This is a Compassing, there is a cleare Endeavour to corrupt the judgement, to take off the bonds of Conscience, the greatest security of the Kings life; God forbid saith one of better judgement then he, That I should stretch out my hand against the Lords annointed, no saith he, the Lord doth not forbid it, you may for these reasons lawfully kill the King.

He that denies the Title to the Crowne, and plots the meanes of setting it upon another head, may doe this without any direct or immediate desiring the death of him that then weares it, yet this is Treason as was adjudged in *ro. Henry 7.* in the case

case of *Burton* and in the Duke of *Norfolkes* case. 13. *Elizabeth*.

This is a compassing of his death, for there can no more be two Kings in one Kingdome, then two sunnes in the Firmament, he that conceives a title, counts it worth ventring for, though it cost him his life, hee that is in possession thinkes it as well worth the keeping. *John Sparhanke* in King *Henry* the fourths time, meeting two men upon the way, amongst other talke said, that the King was not rightfull King, but the Earle of *March*, and that the Pope would grant indulgencies to all that would assist the Earles title, and that within halfe a yeare there would be no Liveries nor Conizances of the King, that the King had not kept promise with the people but had layed taxes upon them. In *Easter* Tearme in the third yeare of *Henry* the fourth in the Kings Bench Rot. 12. this adjudged Treason. This denying the title with motives though but impliedly of Action against it, adjudged Treason, this is a compassing the Kings death.

How this was a compassing the Kings death is declared in the reasons of the judgement, That the words were spoken with an intent to withdraw the affections of the people from the King, and to excite them against the King, that in the end they might rise up against him *in morsem & destructio-nem* of the King.

My

My Lords, in this Judgement and others which I shall cite to your Lordships; It appears that it is a compassing the Kings death by words, to endeavour to draw the peoples hearts from the King, to set discord between the King and them, whereby the people should leave the King, should rise up against him to the death and destruction of the King.

The cases that I shall cite prove not onely that this is Treason, but what is sufficient evidence to make this good.

Upon a Commission held the 18. yeare of *Edw. in Kent*, before the *Marquess of Dorset &c.* others, an Inditement was preferred against *John Awater* of High-Treason, in the forme before mentioned, for words which are entered in the Inditement, *sub hac forma*, That he had bene servant to the Earle of *Warwick*, that though he were dead the Earle of *Oxford* was alive, and should have the government of part of the Country, That *Edward* whom you call King of *England* was a false man, and had by art and subtilty slain the Earle of *Warwick* and the Duke of *Clarence* his brother without any cause, who before had bene both of them attainted of High-Treason.

My Lords, this Inditement was returned into the Kings Bench in *Trinity* Terme in the eighteenth yeare of *Edward* the fourth, and in *Easter* Terme in the two and twentieth yeare of *Edward* the fourth he was outlawed by the Ray of the outlawry, so long

it seemes the Judges had well advised before whether it were Treason or not.

At the same Session Thomas Hether was indicted of Treason for these words, *That the last Parliament was the most simple and insufficient Parliament that ever had been in England. That the King was a good child in Kent because that for the present he had not the love of the Citizens of London, nor should he have it for the future. That if the Bishop of Bath and Wells were dead, the Archbishop of Canterbury, being Cardinall of England, would immediately lose his land.*

This Indictment was returned into the Kings Bench in Trinity Terme in the eighteenth year of Edward the fourth. Afterwards there came a Privy Seale to the Judges to respect the proceedings, which as it should seeme was to the intent the Judges might advise of the Case, for afterwards he is outlawed of high Treason upon this Indictment.

These words were thought sufficient evidence to prove these severall Indictments, That they were spoken to withdraw the peoples affection from the King, to excite them against him, to cause rising against him by the people in more violent manner of the King.

Your Lordships are pleased to consider that in all these Cases, the Treason was for words only, words by private persons, and in a more private manner, but once spoken, and no more, only amongst the people, to excite

them

them against the King.

My Lords, here are words; Counsells more then words, and actions too, not only to dis-
 affect the people to the King, but the King
 likewise towards the people, not once but of-
 ten, not in private, but in places most pub-
 lique, not by a private person, but by a Coun-
 sellor of State, a Lord Lieutenant, a Lord
 President, a Lord Deputie of Ireland.

1. To his Majesty, *That the Parliament had*
devised to supply him; a slander upon all the
 Commons of England in their affections to
 the King and Kingdome, in refusing to yeeld
 timely supply for the necessities of the
 King and Kingdome.

2. From thence, *that the King was loose and*
absolved from rules of government; and who to
 destroy this, that power would admit. My
 Lords, more cannot be said; they cannot be
 aggravated, whatever I should say would be
 in diminution.

Thence, *that hee in Armes in Ireland, you*
may employ to reduce this Kingdome.

To counsell a King not to love his people is
 very unnatural, it goes higher, to hate them,
 to malice them in his heart, the highest ex-
 pressions of malice, to destroy them by gift:
 These cogles they were cast upon his Maje-
 sty, they were blowne, they could not kin-
 dle in his breast.

Thence, my Lords, having done the utmost
 to the King, he goes to the people: At York the

Country being met together for Justice, at the open Assizes upon the Bench, he tells them, speaking of the Justices of the Peace; *that they were all for Law, nothing but Law, but they should find that the Kings little finger should be heavier then the laines of the Law.*

They shall find, my Lords, who speaks this to the people, a Privie Counsellor; this must be either to traduce his Majesty to the people as spoken from him, or from himselfe, who was Lord Leivetenant of the Countrey and President, intrusted with the forces and Justice of those parts, that he would imploy both this way; add, my Lords, to his words, there the exercising of an arbitrary and vast Jurisdiction before he had so much as Instructions or colour of warrant.

Thence, we carry him into *Ireland*, there he represented by his place the sacred person of his Majesty.

1. There at *Dublyn* the principall City of that Kingdome, whether the Subjects of that Countrey came for Justice, in an Assembly of Peeres and others of greatest rank; upon occasion of a Speech of the Recorder of that City touching their Franchises and Legall Rights, he tells them, *that Ireland was a Conquered Nation, and that the King might do with them what he pleased.*

2. Not long after, in the Parliament re. Car. in the Chaire of State, in full Parliaments, againe; *That they were a conquered Nation, and*

Country

B

that

that they were to expect Lawes as from a Conqueror, before, the King might do with them what he would now. They were to expect it; that he would put the power of a Conqueror in execution. The Circumstances are very considerable, in full Parliament, from himselfe in Cathedra, to the representative body of the whole Kingdome.

The occasion adds much, when they desire the benefit of the Lawes, and that their Causes and Suites might be determined according to Law, and not by himselfe, at his will and pleasure, upon paper Petitions.

3. Upon like occasion of pressing the Lawes and Statutes, That he would make an *Act of counsell-board* in that Kingdome, as binding as an *Act of Parliament*.

4. He made his words good by his actions; assumed and exercised a boundlesse and lawlesse Jurisdiction over the lives, persons, and estates of his Majesties Subjects, procured judgement of death against a Peere of that Realme, commanded another to be hanged, this was accordingly executed, both in times of high Peace, without any proccesse or colour of Law.

5. By force for a long time he seized the yare and flax of the Subjects, to the starving and undoing of many thousands, besides the Tobacco businesse, and many Monopolies, and unlawfull Taxes, forced a new Oath not to dispute his Majesties royall commands, de-

terminated mens estates at his owne will and pleasure upon paper Petitions to himselfe; forced Obedience to these, not only by Fines and Imprisonment; but likewise by the Army, felled Souldiers upon the refusers in a hostile manner.

Was an Incendiary of the warre between the two Kingdomes of *England* and *Scotland*.

My Lords, we shall leave it to your Lordships Judgements, whether these words, Counsells, and Actions would not have been a sufficient Evidence to have proved an Inditement drawne up against him, as those before mentioned; and many others are; That they were spoken and done to the intent to withdraw the Kings heart from the people, and the affections of the people from the King, that they might leave the King, and afterwards rise up against him to the destruction of the King; if so, here is a compassing of the Kings death within the words of the Statute of the five and twentieth year of *Edward* the third, and that warranted by many former judgements.

The 4. General Head.

My Lords, I have now done with the three Treasons within the Statute of the five and twentieth of *Edward* the third. I proceed to the fourth upon the Statute of the eighteenth year of *Henry* the sixth, Chapter the third in *Ireland*; I shall make bold to read the words to your Lordships,

That no Lord, nor any other of what condition soever

soever he be, shall bring or lead hoblers, kervers, or hooded men, nor any other people, nor horses to lie on his back or on foot upon the Kings Subjects, nor upon their good wills and consents, but upon their own costs, and without hurt doing to the Common, and if any so do he shall be judged a Traitor.

1. The Argument that hath been made concerning the Person, That it extends not to the King, and therefore not to him, weighs nothing with your Lordships *Rex non habet filios* *regno parem*, from the greatness of his office to argue himselfe into the same impossibility with his sacred Majesty of being accountable of high Treason, is an Offence and reason; The words in the Statute, *Ad Eundem* nor any other of what condition soever he be, includes every Subject.

In the 17th Year of the third and thirtieth yeare of Henry the eight, in the Kings Bench, *Donard Lord Grey*, having immediately before been Lord Deputy of Ireland, is arraigned of High Treason, and judgment given against him for letting diverse Rebels out of the Castle of Dublin, and discharging them hostages and pledges that had been given for securing the Peace, for not punishing one *Murphy* and the King was an Heretic. I have read the whole Record, that is not one thing laid to his charge but was done by him as Lord Lieutenant. He had the same Plea with my Lord of *Stafford*, That these things were no adhering to the Kings Enemies, but

were done for reasons of State. That he was not within those words of the Statute of the five and twentieth years of Edward the third, himselfe being Lord Lieutenant there, they cost his life.

Object. 2.

It hath been said, That the Souldiers, sessed upon the Subjects by him, were not such persons as are intended by that Statute, *Hoblers, Kerues, and hounded men*, these rascall people.

Ans.

My Lords, they were the names given to the Souldiary of these times, *Hoblers* horsemen, the other the foot, but the words of the Statute goes further, *Nor any other people, neither horse nor foot*, his Lordship sessed upon them both horse and foot.

Object. 3.

The Statute extends only to them that leade or bring, *seu* led them, my Lord only gave the warrants.

Ans.

To that I shall say only thus, *plus peccat author quam actor*, by the rule of Law, *agenses & consentientes pari pleuntur pena*, if consent, much more a command to doe it, makes the commandor a Traitor. If there be any Treason within this Statute, my Lord of *Sirafford* is guilty.

It hath been therefore said, That this Statute like *Goliath's* sword hath beene wrapt up in a cloth and laid behind the doore, that it hath never been put in execution.

Ans.

My Lords, if the Clerk of the Crowne in *Ireland* had certified your Lordships that

that upon search of the Judgements of Attainders in *Ireland*, he could not finde that any man had bin attainted upon this Statute; your Lordships had had some ground to believe it, yet its onely my Lord of *Straffords* affirmation: Besides your Lordships know that an Act of Parliament binds untill it bee repealed.

It hath bin therefore said, that this Statute is repealed by the Statutes of the eight yeere of *Edward* the fourth, the first Chapter, and of the tenth yeere of *Henry* the seventh, the two and twentieth Chapter, because by these two Statutes, the English Statutes are brought into *Ireland*.

The Argument, (if I mistook it not,) stood thus; That the Statute of the first of *Henry* the fourth, the 10. Chapter, saith, that in no time to come, Treason shall be adjudged otherwise, then it was ordained by the Statute of the 25. yeere of *Edward* the third, That the Treason mentioned in the 18. yeere of *Henry* the sixth in the Irish Statute is not contained in the Stat. of the 25. yeere of *Ed.* the 3. and therefore being contrary to the Statute of the first of *Henry* the fourth, it must needs be void.

My Lords, the difference of the times wherein the Statute of the first yeere of *Henry* the fourth, and that of the 18. yeere of *Henry* the sixth were made, clears the Point, as is humbly conceived; that of *Henry* the sixth was made 40 yeeres after the other.

The Statute of the eighth yeare of *Edward* the fourth, and the tenth of *Henry* the seventh, bringing in the English Statutes in order and series of time, as they were made one after another (as afterwards is proved they did) it cannot be that the Statute of the first yeere of *Henry* the fourth made fourty yeere before, should repeale or make void the Statute of the 18. H. 6. made so long after. The rule of Law is that *Leges posteriores priores abrogant*, that latter lawes repeale former, but by this construction a former Lawe should repeale and make voide a *Non ens*, a Statute that then was not.

If this were Lawe, then all the Statutes that made any new Treason after the first yeere of *Henry* the fourth were voide in the very fabricke, and at the time when they were made, hence likewise it would follow that the Parliament now upon what occasion soever hath noe power to make any thing Treason not declared to bee so in the Statute of the five and twentieth yeere of *Edward* the third; This your Lordshippes easily see would make much for my Lord of *Straffords* advantage; but why the Law should bee, so your Lordshippes as yet have onely heard an affirmation of it, no reason.

But some touch was given that this Statute

Statute of the tenth yeere of *Henry* the seventh in words makes all the Irish Statutes voide, which are contrary to the English. The Answer to this is a deniall that there are any such wordes in the Statute: This Statute declares, that the English Statutes shall bee effectuall and confirmed in *Ireland*, and that all Statutes, before time, made to the contrary shall bee revoked; this repeales onely the Irish Statutes of the tenth yeere of *Henry* the fourth, and the nine and twentieth yeere of *Henry* the sixth, which say that the English Statutes shall not bee in force in *Ireland*, unlesse particularly received in Parliament, It makes all the Irish Statutes voide, which say that the English Statutes shall not bee in force there.

It is usuall when a Statute saith, that such a thing shall bee done or not done, to adde further that all Statutes to the contrary shall be voide.

No likeli-hood that this Statute intended to take away any Statute of Treason; When but in the Chapter next before this, Murder there is made Treason, as if done upon the Kinges Person.

That this Statute of the eighteenth yeare of *Harry* the sixth remains on foote and not repealed either by the Statute of

the eighth yeere of *Edward* the fourth, or this of the tenth yeere of *Henric* the seventh appeares expressely by two severall Acts of Parliament made at the same Parliament of the tenth yeere of *Henry* the seventh.

By an Acte of Parliament in *Henry* the sixth time, in *Ireland* it was made Treason for any man to procure a privie Seale, or any other Command whatsoever, for apprehending any person in *Ireland* for Treason done without that Kingdome, and to put any such Command in execution; Diverse had beene attainted of Treason for executing such Commands: Heere is a Treason soe made by Acte of Parliament in *Henry* the sixth time: In the third Chapter of this Parliament of the tenth of *Henry* the seventh an Act is passed for no other end then to repeale this Statute of *Henry* the sixth of Treason.

If this Statute of *Henry* the sixth of Treason, had beene formerly repealed by the Statute of 8. *Edw.* 4. or then by the two and twentieth Chapter of this Parliament of 10. *H.* 7. by bringing in the English Statutes, the Law-makers were much mistaken now to make a particular Act of Parliament to repeale it, it being likewise so unreasonable an Act as it was.

In the eighth Chapter of this Parliament of the tenth of *Henry the seventh*; It's enacted, That the Statutes of *Killkenny* and all other Statutes made in *Ireland* (two onely excepted, whereof this of the eighteenth of *Henry the sixt* is none) for the Common-weale, shall bee enquired off and executed. My Lord of *Strafford* saith, that the bringing in of the *English* Statutes hath repealed this Statute of the eighteenth yeere of *Henry the sixt*, the Acte of Parliament made the same time saith noe; it saith that all the *Irish* Statutes, excepting two, whereof this is none, shall still bee in force.

Object. Oh! But however it was in 10. *Hen.7.* yet it appeares by Judgement in Parliament afterwards, That this Statute of the eighteenth yeere of *Henry the sixt* is repealed, and that is by the Parliament of the eleventh yeere of *Queene Elizabeth*, the seventh Chapter, That by this Parliament it is enacted, that if any man without license from the Lord Deputie, lay any Souldiers upon the Kings Subjects, if hee bee a Peere of the Realme, hee shall forfeite one hundred pounds, if under the degree of a Peere 100. markes. This Statute as is alleadged declares the penalty of laying Souldiers upon the Subjects, to bee onely a hundred pounds; and therefore its not Treason.

Answer
F 13 w as dis

Answer. My Lords if the offence for which this penalty of one hundred pounds is laid upon the offender bee for laying Souldiers, or leading them to doe any acts offensive or invasive upon the Kinges people, The Argument hath some force; but that the offence is not for laying Souldiers upon the true Subjects, that this is not the offence intended in the Statute will appeare to your Lordshippes, *Ex absurdo*, from the wordes of it.

The words are, *That if any man shall assemble the people of the Country together to conclude of peace or warre, or shall carry those people to doe any Acts offensive or invasive, then bee shall forfeite one hundred pounds*; If concluding of warre and carrying the people to Acts invasive, bee against the Kinges Subjects, this is high Treason within the words of the Statute of the five and twentieth yeere of *Edward the third*; For if any Subject shall assemble the people and conclude a warre, and accordingly shall leade them to invade the Subject, this is a levying of warre within the wordes of that Statute; and then the Statutes of the five and twentieth yeer of *Edward the third*; the first of *Henry the fourth*; and the first of *Queene Mary* which the Earle of *Strafford* in his Answer desires to bee tryed by, are as well repealed in this point as the

the Statute of the eighteenth yeere of Hen-
rie the sixt, hee might then without feare
of Treason have done what hee plea-
sed with the Irish Army; for all the
Statutes of levying warre, by this Sta-
tute of the eleventh Yeere of Queene
ELIZABETH were taken out of his
way.

In Ireland a Subject gathers forces,
concludes a warre against the Kings peo-
ple, actually invades them; blood-shedde,
burning of houses, Depredations ensue;
two of those, that is murder and burning
of houses are Treason, and there the other
fellony; by this construction the punishment
of Treason and fellony is turned onely into a
fine of one hundred pounds; from losse of
life, lands and all his goods, onely to losse of
part of his goods.

The third absurdity, a warre is concluded,
three severall Inrodes are made upon the
Subject; in the first, a hundred pound Da-
mage; in the second, five thousand pound
Dammage; in the third, tenne thousand
pound Dammage is done to the Subjects,
the penalty for the last inrode is no more
then for the first, only one hundred pounds.
This Statute by this construction tells any
man how to get his living without long
labour.

Two parts of the hundred pounds is gi-
ven to the King, a third part to the informer,
theer's

2.

3.

4.

beere's no damage to the Subject that is robbed and destroyed.

My Lords, the Statute will free it selfe and the makers of it from these absurdities.

The meaning of this Statute is, *That if any Captaine shall of his owne head conclude of peace or warre against the Kings Enemies or Rebels, or shall upon his owne head invade them, without warrant from the King or the Lord Deputie of Ireland, that then hee shall forfeite a hundred pounds.*

The offence is not for laying of Souldiers upon the Kings people; but making of warre against the Irish Rebels without warrant; the offence is not in the matter, but in the manner, for doing a thing lawfull, but without misfion.

1. This will appeare by the generall scope of the Stat. all the parts being put together.

2. By particular clauses in the Statute And,

3. By the Condition of that Kingdome at the time of the making of that Statute.

For the first, The preamble recites that in time of Declination of Justice under pretext of defending the Country and themselves, divers great men arrogated to themselves regal authority under the names of Captains, that they acquired to themselves that govern-

government which belonged to the Crowne, for preventing of this Its enacted, that no man dwelling within the Shire grounds, shall thenceforth assume or take upon himselfe the authority or name of a Captaine within those Shire grounds, without Letters Pattents from the Crown, nor shall under colour of his Captaine-ship make any demand of the people of any exaction, nor as a Captaine assemble the people of the Shire grounds, nor as a Captaine shall leade those people to doe any acts offensive or invasive without warrant under the great Seale of *England* or of the Lord Deputie upon penalty that if hee doe any thing contrary to that act, then the Offendor shall forfeite a hundred pounds.

My Lords, the Rebells had beene out, the Courts of justice scarce sat, for defence of the Country diverse usurped the place of Captaines, concluded of warre against the Rebells & invaded them without warrant; invading the Rebells without authority is the crime.

This appeares further by particular clauses in the Statute, none shall exercise any Captaine-ship within the Shire grounds, nor assemble the men of the Shire grounds to conclude of Warre, or leade them to any invasion.

That that had anciently beene so continued to this time, that is the *Irish* and the

English pale, they within the Shire grounds were within the *English* pale, and *ad fidem & legem Anglie*; the *Irish* that were without the pale were enemies alwayes either in open act of hostility or upon leagues, and hostages given for securing the peace, and therefore as heere in *England*, wee had our marches upon the frontiers in *Scotland* and *Wales*, so were there Marches betweene the *English* and *Irish* pale, where the inhabitants held their Landes by this tenure to defend the Country against the *Irish*, as appeares in the close Rolls of the Tower in the 20. yeare of *Edward* the third, *membrana 15.* on the backside, and in an *Irish* Parliament held the 42. yeare of *Edward* the third. Its declared, that the *English* pale was almost destroyed by the *Irish* enemies, and that there was no way to prevent the danger, but onely that the owners reside upon their Landes for defence, and that absence should bee a forfeiture, this act of Parliament in a great counsell heere was affirmed, as appeares in the close Roll, the 22. yeare of *Edward* the third, *membrana 20. dorle.*

Afterwards as appeares in the Statute of the eight-and-twenty yeare of *Henry* the 6. in *Ireland*, this hostility continued betweene the *English* marches and the *Irish* enemies, who by reason there was no difference betweene the *English* marches and the
in

In their apparell, did daily not being known to the *English*, destroy the *English* within the pale. Therefore its enacted, that every *Englishman* shall shave the haire of his upper lip for distinction sake. This hostility continued, till the tenth yeare of *Henry* the seaventh, as appeares by the Statute of the tenth of *Henry* the seaventh, the seaventeenth Chapter, and so successively downewards, till the making of this very Statute of the eleaventh yeare of *Queene Elizabeth*, as appeares fully in the ninth Chapter.

Nay immediatly before, and at the time of the making of this Statute, there was not onely enmity betweene those of the Shire grounds, that is the *English* and *Irish* pale, but open Warre and Acts of hostility, as appeares by History of no lesse authority, then that Statute it selfe, for in the first Chapter of this Statute is the Attainder of *Shane O Neale*, who had made open Warre, was slaine in open Warre. Its there declared, that hee had gotten by force all the *North* of *Ireland* for an hundred and twenty miles in length, and above a 100. in bredth, that he had mastered diverse places within the *English* pale; when the flame of this warre by his death immediatly before this Statute was spent, yet the fire brands were not all quenched for the rebellion was

continued by *John Fitz. Gerard* called the white Knight, and *Thomas Queverford*, this appears by the Statute of the thirteenth yeare of Queene *Elizabeth* in Ireland, but two yeares after this of the eleaventh yeare of Queene *Elizabeth*, where they are arraigned of high treason for levying Warre this eleaventh yeare, wherein this Statute was made.

So that my Lords immediatly before, and at the time of the making of this Statute, there being Warre betweene those of the Shire grounds mentioned in this Statute, and the *Irish*, the concluding of Warre and Acts offensive and invasive there mentioned can bee intended against no others, but the *Irish* enemies.

Againe the words of the Statute are no Captaine shall assemble the people of the Shire grounds to conclude of peace or warre, is it to bee presumed that those of the Shire grounds will conclude of Warre against themselves? nor shall the Statute shall carry those of the Shire grounds to doe any Acts invasive, by the construction which is made on the other side, they must bee carried to fight against themselves.

Lastly the words are, as Captaine none shall assume the name or authority of a Captaine, or as a Captaine shall gather the

people together, or as a Captaine leade them. The offence is not in the matter, but in the manner: If the acts offensive were against the Kings good subjects, those that went under command were punishable, as well as the Commanders, but in respect, the Souldiers knew the service to be good in it selfe being against the enemies, and that it was not for them to dispute the authority of their commanders, the penalty of a 100. pounds is laid onely upon him, that as Captaine shall assume this power without warrant, the people commanded are not within the Statute.

My Lords, the logicke whereupon this argument hath beene framed stands thus, because the Statute of the eleaventh yeare of Queene *Elizabeth* inflicts a penalty of a 100. pound, and no more upon any man, that as a Captaine without warrant, and upon his owne head shall conclude of, or make Warre against the Kings enemies: therefore the Statute of the 18. yeare of *Henry* the sixt, is repealed, which makes it treason to lay Souldiers upon, or to levy warre against the Kings good people.

But my Lords observation hath bin made upon other words of this statute, that is that without licence of the deputy, these things cannot be done: This shewes, that the deputy is within none of these Statutes.

My Lords, this Argument stands upon
the

the same reason with the former, because he hath the ordering of the Army of *Ireland* for the defence of the people, and may give warrant to the Officers of the Army upon eminent occasions of invasion to resist or prosecute the enemy, because of the danger that else might ensue forthwith by staying for a warrant from his Majesty out of *England*; Therefore it is no treason in the Deputy to imploy the Army in *Ireland* whensoever hee pleaseth for the subversion of the Kings good people, and of the lawes.

My Lords, the Statute of the tenth yeare of *Henry* the seaventh, the seaventeenth Chapter touched upon for this purpose, cleares the busines in both points, for there it is declared, that none ought to make warre upon the *Irish* rebells and enemies without warrant from the Lieutenant, the forfeiture a hundred pounds as here the Statute is the same with this, and might as well have beene cited for repealing the Statute of the eighteenth yeare of *Henry* the sixt, as this of the eleaventh yeare of *Queene Elizabeth*: but if this had beene insisted upon it would have expounded the other two cleare against him.

obj.

My Lords, it hath beene further said although the statute bee in force, and there be a treason within it, yet the Parliament hath no jurisdiction, the treasons are committed in *Ireland*, therefore not triable here.

My

(53.)

My Lords, Sir *John Perrot* his predecessor in the 24. yeare of *Queene Elizabeth* was tried in the Kings bench for treason done in *Ireland*, when hee was Deputy; and *Orucke* in the 33. yeare of *Queene Elizabeth* judged heere for treason done in *Ireland*. *Ans^r.*

But it will bee said, these trialls were after the Statute of the foure-and-thirtieth yeare of *Henry* the eight, which enacts, that treasons beyond sea may bee tried in *England*. *Obj.*

My Lords, his predecessor my Lord *Gray* was tried and adjudged here in the Kings bench, that was in Trinity tearme in the three-and-thirtie yeare of *Henry* the eight, this was before the making of that Statute. *Ans^r.*

To this againe will bee said, that it was for treason by the Lawes and Statutes of *England*, but this is not for any thing, that's treason by the Law of *England*, but by an *Irish* Statute. *Obj.*

So that the question is onely whether your Lordships in Parliament heere have cognizance of an offence made treason by an *Irish* Statute in the ordinary way of judicature without bill, for so is the present question.

For the clearing of this, I shall propound two things to your Lordships consideration;

Whether

2.

Whether the rule for expounding the *Irish* Statutes and customes bee one, and the same in *England* as in *Ireland*.

3.

That being admitted whether the Parliaments in *England* have cognizance or jurisdiction of things there done in respect of the place, because the Kings writ runnes not there.

For the first, if in respect of the place, the Parliament here hath cognizance there; And secondly, if the rules for expounding the *Irish* Statutes and Customes bee the same here as there, this exception as I humbly conceive must fall away.

In *England* there is the common law, the Statutes, the acts of Parliament and customes peculiar to certaine places differing from the common law, if any question arise concerning either a custome or an act of Parliament, the common law of *England*; the first, the primitive and the generall law, that's the rule and expositour of them and of their severall extents, it is so heere, it is so in *Ireland*; the common law of *England*, is the common law of *Ireland* likewise; the same here and there in all the parts of it.

It was introduced into *Ireland* by King *John*, and afterwards by King *Harry* the third, by act of Parliament held in *England* as appears by the pattent Rolls of the 30. yeare of King *Henry* the third, the first mem-

membrana. The words are, *Quid pro communi utilitate terra Hibernia, & unitate terrarum Regis, Rex vult, & de communi consilio Regis praevisum est, quod omnes leges & consuetudines quae in regno Angliae tenentur, in Hibernia teneantur, & eadem terra eisdem legibus subiacent, & per easdem regatur, sicut Dominus Johannes Rex cum alimè esset in Hibernia statuit, & scripsit mandavit. Quia &c. Rex vult quod omnia brevia de communibus iura quae in regno Angliae sunt, in Hibernia sub huius sigillo Regis, mandatum est Archiepiscopo, &c. quod pro pace & tranquillitate ejusdem regni per easdem leges eos regat, & delicta permissum, & cetera omnibus sequantur. In cuius &c. Teste Rege, apud Woodstock, decimo nono die Septembris.*

Here is an union of both Kingdomes, and that by act of Parliament, and the same Lawes to bee used here as there, in *owne* My Lords, That nothing might bee left here for an exception, that is, that in treasons, felonies, and other capitall offences concerning life, the Irish Lawes are not the same as here; Therefore it is enacted in a Parliament held in England in the fourteenth yeere of Edward the second (it is not in print neither, but is in the Parliament booke) That the Lawes concerning life and member shall be the same in Ireland as in England.

And that no exception might yet remaine,
 you H in

in a Parliament held in England, the fifth yeere of *Edward* the third, It is enacted, *quod una & eadem Lex fiat tam Hibernicis quam Anglicis.* This Act is enrolled in the Patent rolls of the fifth yeere of *Edward* the third, *parl. memb. 35.*

The Irish therefore receiving their Lawes from hence, they send their Students at Law to the Inns of Courts in England, where they receive their degree; and of them, and of the common Lawyers of this Kingdome are the Judges made.

My Lords, The petitions have been many from Ireland, to send from hence some Judges more learned in the Lawes then those they had there.

It hath been frequent in cases of difficulty there, to send sometimes to the Parliament here, sometimes to the King by advice from the Judges here, to send them resolutions of their doubts: Amongst many I'll cite your Lordships onely one, because it is in a case of Treason upon an Irish Statute, and therefore full to this point.

By a Statute, there made in the fifth yeere of *Edward* the fourth, there is provision made for such as upon suggestions are committed to prison for Treason, that the party committed, if he can procure 24. Compurgators, shall be bailed, and let out of prison.

Two Citizens of Dublin were by a grand Jury presented to have committed Treason;
They

They desired the benefit of this Statute, that they might bee let out of prison upon tender of their Compurgators. The words of the Statute of the fifth yere of Edward the fourth in Ireland being obscure, the Judges there not being satisfied what to doe, sent the case over to the Queene, desired the opinion of the Judges here; which was done accordingly: The Judges here sent over their opinion, which I have out of the Booke of Justice *Anderson*, one of the Judges consulted withall. The Judges here delivered opinion upon an Irish Statute in case of Treason.

If it bee objected, That in this case the Judges here did not judge upon the party; their opinions were onely *ad informandum conscientiam* of the Judges in Ireland; that the judgement belonged to the Judges there:

My Lords, with submission, this and the other Authorities prove that for which they were cited; that is, That no absurdity, no failer of Justice would ensue if this great Judicatory should judge of Treason so made by an Irish Statute.

The common Law, the rule of Judging upon an Irish Statute, the pleas of the Crowne for things of life and death, are the same here and there. This is all that hath yet been offered.

For the second point, That England hath no power of Judicature for things done in Ireland; My Lords, the constant practice of all ages proves the contrary.

Writs of error in Pleas of the Crowne as well as in civill causes, have in all Kings reignes beene brought here, even in the inferior Courts of Westminster Hall; upon judgements given in the Courts of Ireland: The practice is so frequent, & so well known, as that I shall cite none of them to your Lordships: no president will I beleve, bee produced to your Lordships, that ever the case was remanded back againe into Ireland, because the question rose upon an Irish Statute or custome.

But it will be said, That writs of error are only upon a failure of justice in Ireland, and that suits cannot originally be commenced here for things done in Ireland, because the Kings writ runs not in Ireland. This might be a good plea in the Kings Bench, and inferior Courts at Westminster Hall; the question is, whether it bee so in Parliament. The Kings writ runs not within the County Palatine of Chester and Durham, nor within the five Ports; neither did it in Wales before the union in Henry the eighth's time; after the Lawes of England were brought into Wales in King Edward the first's time, suits were not originally commenced in Westminster Hall, for things done in them, yet this never excluded the Parliament; suits for life, lands, and goods within those jurisdictions are determinable in Parliament, as well as in any other parts of the Realme.

Ireland, as appears by the Statute of the thirtieth yeer of *Henry* the third, before mentioned, is united to the Crowne of England.

By the Statute of the eight and twentieth yeere of *Henry* the sixth in Ireland, it is declared in these words; That Ireland is the proper Dominion of England, and united to the Crowne of England, which Crowne of England is of it selfe, and by it selfe, fully, wholly, and entirely endowed with all power and authority sufficient to yeeld to the subjects of the same full and plenary remedy in all debates and suits whatsoever.

By the Statute of the three and thirtieth yeer of *Henry* the eighth, the first Chapter, when the Kings of England first assumed the title of King of Ireland, it is there enacted, That Ireland still is to be held as a Crown annexed and united to the Crown of England.

So that by the same reason, from this, that the Kings writ runs not in Ireland, it might aswell be held, that the Parliament cannot originally hold plea of things done within the County Palatine of Chester & Durham, nor within the five Ports & Wales; Ireland is part of the Realme of England, as appears by those Statutes, aswell as any of them.

This is made good by constant practice. In all the Parliament rolls, from the first to the last, there are receivers and tryors of petitions appointed for Ireland. For the Irish to come so farre with their petitions for justice, and the Parliament not to have cognizance, when from time to time they had in the

the beginning of the Parliament appointed receivers and tryers of them, is a thing not to be presumed.

An appeal in Ireland brought by *William Lord Feseye* against *John Fitz Thomas* for treasonable words there spoken, before any Judgement given in the case there, was removed into the Parliament in England, and there the defendant acquitted, as appears in the Parliament pleas of the two and twentieth yeere of *Edward* the first.

The suits for lands, offices, and goods, originally begun here, are many, and if question grew upon matter in fact, a Jury usually ordered to try it, and the verdict returned into Parliament, as in the case of one *Baliben*, in the Parliament of the five and thirtieth yeere of *Edward* the first. If doubt arose upon a matter triable by Record, a writ went to the Officers in whose custody the Record remained, to certifie the Record, as was in the case of *Robert Bagot* the same Parliament of the five and thirtieth yeere of *Edward* the first, where the writs went to the Treasurer and Barons of the Exchequer.

Sometimes they gave judgement here in Parliament, and commanded the Judges there in Ireland to doe execution, as in the great case of petition between the coparceners of the Earle Marshall, in the Parliament of the three and thirtieth yeere of *Edward* the first, where the writ was awarded to the Treasurer of Ireland.

My Lords, The Lawes of Ireland were introduced by the Parliaments of England, as appears by

by three Acts of Parliament before cited.

It is of higher jurisdiction *dare Leges*, then to judge by them.

The Parliaments of England doe binde in Ireland, if Ireland bee particularly mentioned, as is resolved in the Book case of the first yeere of *Henry* the seventh, *Cokes* seventh Report, *Calvins* case, and by the Judges in Trinity Terme, in the three and thirtieth yeere of *Queene Elizabeth*: The Statute of the eighth yeere of *Edward* the fourth, the first Chapter in Ireland recites, that it was doubted amongst the Judges, whether all the English Statutes, though not naming Ireland, were in force there; if named, no doubt.

From King *Henry* the third his time downward to the eighth yeere of *Queene Elizabeth* (by which Statute it is made felony to carry sheepe from Ireland beyond seas) in almost all these Kings reignes there be Statutes made concerning Ireland.

The exercising of the *Legislative* power there over their lives and estates, is higher then of the Judiciall in question. Untill the nine and twentieth yeere of *Edward* the third, erroneous judgements given in Ireland were determinable no where but in England; no, not in the Parliaments of Ireland, as it appears in the close rolls in the Tower, in the nine and twentieth yeere of *Edward* the third, *membr. 12*. Power to examine and reverse erroneous judgements in the Parliaments of Ireland is granted from hence; Writs of errorr lie in the Parliament here upon erroneous judgements after that time

time given in the Parliaments of Ireland, as appears in the Parliament rolls of the eighth yeere of *Henry* the sixth, *no.* 70. in the case of the Prior of *Len-* than. It is true, the case is not determined there, for it's the last thing that came into the Parliament, and could not be determined for want of time; but no exception at all is taken to the jurisdiction.

The Acts of Parliament made in Ireland have bin confirmed in the Parliaments of England, as appears by the close rolls in the Tower, in the twelfth and fortieth yeere of *Edward* the third, *membr.* 10. *or* *cap.* 3; where the Parliament in Ireland, for the preservation of the Countrey from the Irish, who had almost destroyed it, made an Act, that all the land owners that were English should reside upon their lands, or else they were to bee forfeited: This was here confirmed.

In the Parliament of the fourth yeere of *Henry* the fifth, *chap.* 6. Acts of Parliament in Ireland are confirmed, and some privileges of the Peeres in the Parliaments there are regulated.

Power to repeale Irish Statutes, power to confirme them, cannot be by the Parliament here, if it hath not cognizance of their Parliaments, unlesse it be said, That the Parliament may doe it knowes not what.

Guernsey and *Jersey* are under the Kings subjection, but are not parcells of the Crowne of England, but of the Duchy of *Normandy*; they are not governed by the Lawes of England, as Ireland is; and yet Parliaments in England have usually held plea
of,

of, and determineth all causes concerning lands or
 goods in the Parliament of 33. In which the *Assize
 de Insula Jurnesey*; and so in the Parliament 34. E. 1.
 and so for Normandy and Gascoyn; and alwaies as
 long as any part of France was in subjection to the
 Crown of England; there were, at the beginning of
 the Parliaments, receivers and tryers of petitions for
 those parts appointed.

or I believe your Lordships will have no cases
 shew'd of any plea to the jurisdiction of the Parli-
 ament of England in any thing done in any parts
 wheresoever in subjection to the Crown of
 England.

The last thing I shall offer to your Lordships is
 the case of 19. E. 4. in my Lord Dyer 306. and Judge
 Comptons book of the jurisdiction of Courts 64. 2.
 The opinion of both these Books is, That an Irish
 Peer is not triable here. It is true a Scottish or French
 Nobleman is triable here as a common person; the
 Law takes no notice of their Nobility because those
 Countries are not govern'd by the Laws of Eng-
 land; but Ireland being govern'd by the same Laws,
 the Peers there are triable according to the Law of
 England, only *per paritatem rationis*.

By the same reason the Duke of Sarafford; not
 being a Peer of Ireland, is not triable by the Peers
 of Ireland; so that if hee bee not triable here, hee
 is triable nowhere.

My Lords, In case there be a Treason and a Trai-
 tor within the Statute, and that he be not triable here
 for it in the ordinary way of judicature, if that Juris-

distinct faults, this by way of Bill doth not; 'Attain-
ders of Treason in Parliament are as legal, as usual
by Act of Parliament as by Judgements.

I have now done with the Statutes of 25. E. 3. and
18. H. 6. My Lord of Strafford hath offended a-
gainst both the Kingdomes; and is guilty of high
Treason by the Lawes of both.

5 My Lords, In the fifth place I am come to the
Treasons at the common Law, The endeavouring to
subvert the fundamentall Lawes and government
of the Kingdomes, and to introduce an arbitrary and
tyrannicall government.

In this I shall not at all labour to prove, that the
endeavouring by words, minile, and actions to sub-
vert the Lawes, is treason at the common Law; if
perhaps any common Law treasons at all last, no
more treason, if this not, I will make a Kingdome
Kingdomes take the pollicie, and government away,
England but a piece of earth, wherein so many men
have their contradictory & abode, without tanks or
distinction of men, without propertie in any thing
further then possession, no Law to punish the mur-
dering or robbing one another.

That of 33. H. 8. of introducing the Imperiall Law,
sinks not with your Lordships: It was in case of an
appeal to Rome, these appeals in cases of marriages,
& other causes counted Ecclesiasticall, had been fre-
quent, had in most Kings reigns been tolerated; some
in times of Popery put a conscience upon them, the
Statutes had limited the penalty to a *Fremurire* on-
ly; Neither was that a totall subversion, only an Ap-
peale

peale from the Ecclesiasticall Court here in a single
 cause to the Court at Rome; and if treason or not
 that case proves not; a treason may be punished as a
 felony, a felony as a trespass, if his Majesty so please;
 the greater includes the lesser: In the case of *Prémur*
 in the Irish reports, that which is there declared
 to be treason proceeded upon only as a *Prémur*.

The thing most considerable in this, is whether
 the treasons at common Law be taken away by the
 Stat. of 15. E. 3. 1. H. 4. or 1. Q. M. or any of them.

My Lords, To say they bee taken away by the
 Stat. of 15. E. 3. is to speak against both the direct
 words and scope of that Statute.

In it there's this clause, *That because many other like
 cases of treason might fall out which are not there declar-
 ed, therefore it is enacted, That if any such case come
 before the judges, they shall not proceed to judgement
 till the case bee declared in Parliament, whether it
 ought to be adjudged treason, or not.*

These words, and the whole scope of that Statute
 shewes, That it was not the meaning to take away a-
 ny treasons that were so before; but onely to regu-
 late the jurisdiction and manner of tryall. Those that
 were single & certain Acts, as Conspiring the Kings
 death, Levying warre, Counterfeiting the money, or
 great Seal, Killing a Judge; these are left to the ordi-
 nary Courts of Justice: The others not depending
 upon single Acts, but upon constructions and neces-
 sary inferences, they thought it not fit to give the in-
 feriour Courts so great a latitude here, as too dange-
 rous to the subject, those they framed to the Parlia-
 ment.

This Statute was the great security of the subjects made with such wisdom as all the succeeding ages have approved it: It hath often passed through the furnace, but like gold hath lost little or nothing.

The Statute of 1. H. 4. c. 19. is in these words: *Whereas in the Parliament held the 21. year of Richard the second divers pains of treason were ordained, inasmuch that no man did know how to behave himselfe to doe say or speake. It is accorded that in no time to come any treason be adjudged otherwise then it was ordained by the Statute of 25. H. 3. c. 10.*

It hath bin said To what end is this Statute made? if it takes not away the common Law treasons remaining after the Statute of 25. H. 3.

There be two maine things which this Statute doth: First it takes away for the future all the Treasons made by any Statute since 25. H. 3. to 1. H. 4. even to that time. Secondly in respect that by another Act in that Parliament the Statute of 21. H. 2. was repealed, it will not be denied but that this Statute repeales most treasons therein of 21. H. 2. it repeales all Statute treasons but those of 25. H. 3.

Secondly It not only takes away the Statute treasons, but likewise the declared treasons in Parliament after 25. H. 3. to the Statute. After declaration in Parliament the inferior Courts might judge these treasons for the declaration of a treason in Parliament after it was made, was sent to the inferior Courts that tried matters the like case fell out, they might proceed therein, the subjects for the future

was secured against these, so that this Statute was of great use.

By the very words, of it, it still refers all treasons to the provision of 25. E. 3. it leaves that entire and upon his old bottom.

The Statute of 1. 2. M. cap. 1. saith: That no offences made treason by any Act of Parliament, shall henceforth be taken or adjudged to be treason, but only such as be declared and expressed to be treason by the Statute of 25. E. 3. concerning treason, or the declaration of treason, and no others: And further provides that no paines of death, penaltie, or forfeiture, in any wise shall ensue for committing any treason, other then such as be in the Statute of 25. E. 3. ordained and provided, any Acts of Parliament or any declaration or matter to the contrary in any wise notwithstanding.

By the first part of this Statute, onely offences made Treason by Act of Parliament are taken away, the Common Law Treasons are no way touched. The words (and no others) refer still to offences made treason by Act of Parliament, they restrain not to the treasons onely particularly mentioned in the Statute of 25. E. 3. but leave that Statute entire as to the common Law treason, as appears by the words immediately foregoing.

By the second part for the paines and forfeitures of treasons if it intend only the punishment of treason, or if it intend both treason and punishment, yet all is referred to the provision and ordinance of 25. E. 3. any Act of Parliament or other declaration or thing notwithstanding.

It saith not, other then such penalties or treasons as are expressed and declared in the Statute of 25. E. 3 that might perhaps have restrained it to those that are particularly mentioned: No, it refers all treasons to the generall ordination and provision of that Statute, wherein the common-Law treasons are expressly kept on foot.

If it bee askt what good this Statute doth if it take not away the common-Law treasons:

1. It takes away all the treasons made by Act of Parliament, not onely since the first of H. 4. which weremany, but all before 1. H. 4. even untill 25. E. 3. by expresse words.

2. By expresse words, it takes away all declared treasons, if any such had been made in Parliament: these for the future are likewise taken away, so that whereas it might have been doubted, whether the Statute of 1. H. 4. took away any treasons but those of 21. Richard 2. this clears it both for treasons made by Parliament, or declared in Parliament, even to the time of making the Statute.

This is of great use, of great security to the subject, so that as to what shall be treason, and what not, the Statute of 25. E. 3. remains entire, and so by consequence the treasons at the common Law.

Onely, my Lords, it may be doubted whether the manner of the parliamentary proceedings bee not altered by the Statute of 1. H. 4. the 17. chapter, and more fully in the Parliament roll, number 144. that is, whether since that Statute the parliamentary power of declaration of treasons, whereby

the inferiour Courts received jurisdiction, be not taken away and restrained onely to Bill, that so it might operate no further, then to that particular contained in the Bill, that so the parliamentary declarations for after times, should be kept within the Parliament it selfe and be extended no further. Since 1. H. 4. we have not found any such declarations made, but all Attainders of treason have bin by Bill.

If this be so, yet the common Law treasons still remaining, there is one and the same ground of reason and equity since 1. H. 4. for passing of a Bill of treason, as was before for declaring of it without Bill.

Herein the *Legislative* power is not used against my Lord of Strafford in the Bill, its onely the jurisdiction of the Parliament.

But my Lords, because that either through my mistaking of the true grounds and reasons of the Commons, or my not pressing of them with apt arguments and precedents of former times, or that perchance your Lordships from some other reasons and authorities, more swaying with your Lordships judgements, then these from them, may possibly bee of a contrary or dubious opinion concerning these treasons, either upon the Statutes of 25. E. 3. & 18. H. 6. or at the common Law:

If all these five should faile, they have therefore given me further in command to declare to your Lordships some of their reasons, why they conceive

conceive that in this case the meer *Legislative* power may be exercised.

Their reasons are taken from these three grounds:

- 1 From the nature and quality of the offence.
- 2 From the frame and constitution of the Parliament wherein this Law is made.
- 3 From practices and usages of former times.

The horridness of the offence in endeavouring the overthrowing the Lawes and present government, hath beene fully opened to your Lordships heretofore.

The Parliament is the representation of the whole Kingdome, wherein the King as Head, your Lordships as the more noble, and the Commons the other members, are knit together into one Body politick: This dissolves the arteries and ligaments that hold the Body together, the Lawes: Hee that takes away the Lawes, takes not away the allegiance of one subject alone, but of the whole Kingdome.

It was made treason by the Statute of 13. *El.* for her time, to affirme, That the Lawes of the Realme doe not binde the descent of the Crowne; no Law, no descent at all.

No Lawes, no Peerage, no ranks or degrees of men; the same condition to all.

It's treason to kill a Judge upon the Bench; this kills not *Iudicem*, sed *Iudicium*: Hee that borrowed *Apelles*, and gave bond to returne again *Apelles* the Painter, sent him home after he had cut off his right hand; his bond was broken, *Apelles* was sent, but not the Painter. There bee twelve men, but no

Law;

law, there's never a Judge amongst them.

Its felony to embezill any one of the judiciall Records of the Kingdome; this at once sweeps them all away, and from all.

Its treason to counterfeit a twenty shill.piece, here's a counterfeiting of the Law, we can call neither the counterfeit nor true coine our owne.

Its treason to counterfeit the great Scale for an acre of land, no property hereby is left to any land at all. Nothing treason now, either against King or Kingdome, no law to punish it.

My Lords, if the question were asked in Westminster Hall; whether this were a crime punishable in Starre-chamber, or in the Kings Bench, by fine or imprisonment, they would say, It went higher: If whether felony, they would say, That's for an offence onely against the life or goods of some one or few persons: It would, I beleve, be answered by the Judges, as it was by the chiefe Justice *Thirning*, in 21.R.2. That though he could not judge the case treason there before him, yet if he were a Peere in Parliament, hee would so adjudge it.

My Lords, if it bee too bigge for those Courts, we hope its in the right way here.

2. The second consideration is from the frame and constitution of the Parliament, the Parliament is the great body politicke, it comprehends all from the King to the Beggar: if so, my Lords, as the naturall, so this body, it hath power over it selfe, and every one of the members for the pre-

servation of the whole: Its both the Physician and the patient: if the body bee distempered, it hath power to open a veine to let out the corrupt bloud for curing of it selfe; if one member be poysoned or gangrened, it hath power to cut it off for the preservation of the rest.

But, my Lords, it hath bin often inculcated, that Law-makers should imitate the supreme Law-giver, who commonly warnes before he strikes; the Law was promulged before the judgement of death for gathering the stickes; no law, no transgression.

My Lords, to this the rule of Law is, *Frustra legis auxilium invocat, qui in legem committit*, from the *lex Talionis*, he that would not have had others to have law, why should he have any himselfe? why should not that be done to him, that himselfe would have done to others?

Its true, we give law to Hares and Deeres, because they be beasts of Chase; It was never accounted either cruelty or foul play to knock Foxes and Wolves on the head, as they can be found; because these be beasts of prey: The Warrener sets traps for Powlcats and other Vermine, for preservation of the Warren.

Further, my Lords, most dangerous diseases, if not taken in time, they kill: Errors in great things, as Warre and Marriage, they allow no time for repentance; it would have been too late to make a law, when there had been no law.

My Lords, for further answer to this objecti-

ort, he hath offended a law, a law within, the endeavouring to subvert the lawes and politie of the state wherein he lived, which had so long, and with such faithfulness protected his Ancestry, himself, and his whole family; it was not *malum, quia prohibitum*, it was *malum in se*, against the dictates of the dullest conscience, against the light of nature; they, not having the law, were a law to themselves.

Besides this, he knew a law without, That the Parliament in cases of this nature had *potestatem vite & necis*.

Nay, he well knew, that he offended the promulged and ordinary rules of law: Crimes against law have been proved, have been confessed, so that the question is not *de culpa*, *sed de pena*, what degree of punishment those faults deserve; we must differ from him in opinion; that twenty felonies cannot make a treason, if it be meant of equality in the use of the Legislative power: for, he that deserves death for one of these felonies alone, deserves a death more painful and more ignominious for all together.

Every felony is punished with losse of life, lands, and goods; a felony may bee aggravated with those circumstances, as that the Parliament with good reason may adde to the circumstances of punishment, as was done in the case of *John Hall*, in the Parliament of 1.H.4. who for a barbarous murder committed upon the Duke of Gloucester, stifling him between two feather-beds at Calice, was adjudged to be hanged, drawn, and quartered.

Batteries by Law are punishable only by fine and single dammages to the party wounded.

In the Parliament held in 1. H. 4. cap. 6. one *Savadge* committed a Battery upon one *Chedder* servant to Sir *John Brooke*, a knight of the Parliament for *Sommerfetshire*; Its there enacted, that he shall pay double dammages, and stand convicted if he render not himselfe by such a time: The manner of proceedings quickned, the penalty doubled, the circumstances were considered, it concerned the Common-wealth, it was Battery with breach of priviledge of Parliament.

This made a perpetuall Act, no warning to the first offendor; And in the Kings Bench, as appears by the booke case of 9. H. 4. the first lease, double dammages were recovered.

My Lords, in this of the Bill the offence is high and generall, against the King and the Common-wealth; against all, and the best of all.

If every Felony be losse of life, lands and goods, what is misuser of the *Legislative* power, by addition of Ignominie in the death and disposall of the lands to the Crowne, the publicke patrimony of the kingdome.

But it was hoped that your Lordships had no more skill in the Art of killing of men, then your worthy Ancestors.

My Lords, this appeale from your selves to your Ancestors we admit of, although we do not admit of that from your Lordships to the Peers of Ireland

He hath appealed to them; your Lordships will

be

be pleased to heare what Judgement they have already given in the Case, that is the severall attainders of treason in Parliament, after the Statute of 25. E. 3. for treasons not mentioned, nor within that Statute, and those upon the first offenders without warning given.

By the Statute of 25. E. 3. its treason to levy war against the King : *Gomines* and *Weston* afterwards in Parliament in 1. R. 2. num. 38. 39. adjudged traitors for surrendring two severall Castles in France onely out of feare, without any compliance with the Enemy, this not within the Statute of 25. E. 3.

My Lords, in 3. R. 2. *John Imperiall* that came into England upon letters of safe conduct, as an Agent for the state of Genoa, sitting in the Evening before his doore in Breadstreete, (as the words of the Records are,) *paulo ante ignis ignis*; *John Kirby* and another Citizen coming that way, casually *Kirby* trode upon his Toe: it being twilight, this grew to a quarrell, and the Embassadour was slaine; *Kirby* was indicted of high treason, the inditement findes all this, and that it was onely done *se defendendo*, and without malice.

The Judges, it being out of the Statute of 25. E. 3. could not proceede; the Parliament declared it treason, and judgement afterwards of high treason, there's nothing can bring this within the Statute of 25. E. 3. but it concerns the honour of the Nation, that the publicke faith should be strictly kept: It might endanger the trafficke of the Kingdome, they

they made not a Law first, they made the first man an example. This is in the Parliament roll, 3. R. 2. num. 18. and *Hilary Terme*, 3. R. 2. Rot. 31. in the Kings Bench, where judgment is given against him.

In 11. R. 2. *Trefilian*, and some others attainted of treason for delivering opinions in the subversion of the Law, and some others for plotting the like: My Lords, the case hath upon another occasion bene opened to your Lordships; only this is observable, That in the Parliament of the first yeare of *Henry* the third, where all treasons are again reduced to the Statute of 25. E. 3. these Attainders were by a particular Act confirmed and made good, that the memory thereof might bee transmitted to succeeding ages: They stand good unto this day; the Offences there, as here, were the endeavouring the subversion of the lawes

My Lords, after 1. H. 4. Sir *John Mortimer* being committed to the Tower upon suspicion of treason, brake prison, and made an escape: This no way within any Statute, or any former Judgment at common Law; for this, that is, for breaking the prison only, and no other cause, in the Parliament held the second yeer of *Henry* the sixth, hee was attainted of high treason by Bill.

My Lords, Poysoning is only murder; yet one *Richard Coke* having put poyson into a pot of pottage in the kitchen of the Bish. of Rochester whereof two persons died, hee's attainted of treason, and it was enacted, that he should bee boyled to death by the Statute of 22. H. 8. cap. 9.

By

By the Statute of 25. H. 8. *Elizabeth Barton*, the holy maid of Kent, for pretending revelations from God, that God was highly displeased with the King for being divorced from the Lady *Katherine*, and that in case he persisted in the separation, and should marry another, that he would not continue King above one moneth after; because this tended to the depriving of the lawfull succession to the Crowne, shee is attainted of treason.

In the Parliament 2. & 3. H. 6. cap. 16. the Lord Admirall of England was attainted of treason for procuring the Kings Letters to both Houses of Parliament, to be good to the said Earle in such matters as hee should declare unto them, for saying that hee would make the Parliament the blackest Parliament that ever was in England, endeavouring to marry the Lady *Elizabeth* the Kings sister, taking a bribe of *Sherrington*, accused of treason, and thereupon consulting with Councell for him, and some other crimes, none of them treason, so cleerely within the Statute of 25. E. 3. or any other Statute, as is the case in question.

My Lords, All these Attainders, for ought I know, are in force at this day; the Statutes of the first yeere of *Henry* the fourth, and the first of *Qu. Mary*, although they were willing to make the Statute of the five and twentieth yeere of *Edward* the third the rule to the inferiour Courts, yet they left the Attainders in Parliament precedent to themselves untoucht, wherein the *Legislative* power had been exercised. There's nothing in them whence it
can

can be gathered, but that they intended to leave it as free for the future.

My Lords, In all these Attainders, there were crimes and offences against the Law; they thought it not unjust, circumstances considered, to heighten and add to the degrees of punishment, and that upon the first offender.

My Lords, We receive, as just, the other Lawes and Statutes made by these our Ancestors: they are the rules we goe by in other cases; why should we differ from them in this alone?

These (My Lords) are in part those things which have satisfied the Commons in passing of the Bill; It is now left to the Judgement and Justice of your Lordships.

FINIS

